No. 03-1526 MAY 6 2004

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In The Supreme Court of the United States

HOCKING VALLEY COMMUNITY HOSPITAL,

Petitioner,

v.

RUTH EDWARDS, et al.,

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Did the United States Court of Appeals for the Sixth Circuit err and blatantly depart from *Erie R.R. v. Tompkins*, 304 U.S. 64 (1938), by refusing to apply Ohio state law and by not ordering an evidentiary hearing on the enforceability of the ambiguous settlement agreement so as to determine the true intent and actual meaning of the agreement?

2. Did the United States Court of Appeals for the Sixth Circuit err and blatantly depart from *Erie R.R. v. Tompkins*, 304 U.S. 64 (1938), by failing to order the reformation of the settlement agreement in accordance with fundamental common-law contract principles of law so that the agreement could comport with the actual intent of the parties ?

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OPINIONS AND ORDERS BELOW

The April 27, 2001 ruling of the United States District Court for the Southern District of Ohio, Eastern Division, denying Defendant's Notice of Withdrawal/Motion for Reformation and ordering the enforcement of the settlement agreement is set out in the Appendix at A-1. The United States Court of Appeals for the Sixth Circuit per curiam decision affirming the Order approving the Proposed Stipulation of Settlement, dated February 9, 2004, is set out in the Appendix at A-10. The Order of the United States Court of Appeals for the Sixth Circuit denying Defendant-Appellant Hocking Valley Community Hospital's Petition for Panel Rehearing, dated March 9, 2004, is set out in the Appendix at A-31.

STATEMENT OF JURISDICTION

Jurisdiction of the United States District Court for the Southern District of Ohio, Eastern Division, the court of first instance, was invoked pursuant to 28 U.S.C. § 1331 because the court was presented with federal questions involving the application of 15 U.S.C. §§ 1292k et seq., the Fair Debt Collection Practices Act (FDCPA), and 15 U.S.C. §§ 1691 et seq., the Equal Credit Opportunity Act (ECOA).

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1). The Order of the United States Court of Appeals for the Sixth Circuit affirming the United States District Court for the Southern District of Ohio was entered on February 9, 2004. The final judgment of the United States Court of Appeals for the Sixth Circuit denying Defendant-Appellant Hocking Valley Community Hospital's Petition for Panel Rehearing was rendered on March 9, 2004.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Ohio Rev. Code § 3103.03. Duty of married person to support self, spouse, and children; duration of duty to support; third person's recovery of support; funeral expenses of spouse

(A) *Each married person must support the person's self and spouse out of the person's property or by the person's labor. If a married person is unable to do so, the spouse of the married person must assist in the support so far as the spouse is able.* The biological or adoptive parent of a minor child must support the parent's minor children out of the parent's property or by the parent's labor.

(B) Notwithstanding section 3109.01 of the Revised Code and to the extent provided in section 3319.86 of the Revised Code, the parental duty of support to children shall continue beyond the age of majority as long as the child continuously attends on a full-time basis any recognized and accredited high school. That duty of support shall continue during seasonal vacation periods.

(C) If a married person neglects to support the person's spouse in accordance with this section, any other person, in good faith, may supply the spouse with necessaries for the support of the spouse and recover the reasonable value of the necessaries supplied from the married person who neglected to

support the spouse unless the spouse abandons that person without cause.

(D) If a parent neglects to support the parent's minor child in accordance with this section and if the minor child in question is unemancipated, any other person, in good faith, may supply the minor child with necessaries for the support of the minor child and recover the reasonable value of the necessaries supplied from the parent who neglected to support the minor child.

(E) If a decedent during the decedent's lifetime has purchased an irrevocable preneed funeral contract pursuant to section 1109.75 of the Revised Code, then the duty of support owed to a spouse pursuant to this section does not include an obligation to pay for the funeral expenses of the deceased spouse. This division does not preclude a surviving spouse from assuming by contract the obligation to pay for the funeral expenses of the deceased spouse.

(Emphasis added.)

STATEMENT OF THE CASE

Proceedings Below

Plaintiff Ruth Edwards (hereinafter "Edwards") filed a Complaint against Defendants Jack E. McCormick, a debt collector, and Hocking Valley Community Hospital, on or about December 13, 1999. The Complaint was filed by Edwards on her own behalf as well as on behalf of the estate of her deceased husband, Thomas C. Edwards, and as a class action on behalf of others similarly situated. The Complaint

alleges inter alia that the Defendants engaged in debt collection practices in violation of the federal Equal Credit Opportunity Act (ECOA), 15 U.S.C. §§ 1691 et seq. Class certification was denied by the United States District Court for the Southern District of Ohio by Order dated October 31, 2000.

Prior to denying class certification, the United States District Court required the parties to submit a Proposed Stipulation of Settlement. On October 23, 2000, Edwards and Hocking Valley Community Hospital submitted to the United States District Court a Proposed Stipulation of Settlement for review and approval. The proposal included a settlement agreement and an exhibit to the agreement. On November 15, 2000, the United States District Court filed a Stipulation of Substitution of Exhibit A to the Proposed Stipulation of Settlement.

On January 26, 2001, Hocking Valley Community Hospital filed a Notice of Withdrawal of the Proposed Stipulation of Settlement or Motion for Reformation of the Proposed Stipulation of Settlement. Edwards filed in response a Motion to Enforce Settlement with Hocking Valley Community Hospital. In Hocking Valley Community Hospital's Memorandum Contra to Plaintiff's Motion to Enforce Settlement with Defendant Hocking Valley Community Hospital, Hocking Valley argued that the federal court was required to follow Ohio state law regarding the construction of the Stipulation and Settlement. Oral argument on Hocking Valley Community Hospital's Notice of Withdrawal was held on March 26, 2001. The United States District Court for the Southern District of Ohio ordered on April 27, 2001 that Hocking Valley Community Hospital's Notice of Withdrawal of Proposed Stipulation be denied. On February 20, 2002, the United States District Court filed an Order approving the Proposed Stipulation of Settlement between Edwards and Hocking Valley Community Hospital.

On March 21, 2002, Hocking Valley Community Hospital filed its Notice of Appeal appealing the United States District Court's Order approving the Proposed Stipulation of Settlement to the United States Court of Appeals for the Sixth Circuit. In Hocking Valley Community Hospital's Final Brief of Appellant, Hocking Valley Community Hospital argued that under *Erie R.R. v. Tompkins*, 304 U.S. 64 (1938), the federal court erred in not applying Ohio state law when it failed to order an evidentiary hearing to resolve the parties' conflicts over the meaning of the Stipulation.

The Sixth Circuit Court of Appeals affirmed the District Court's judgment on February 9, 2004 by a 2 to 1 vote. Circuit Judge Ryan wrote the dissenting opinion. Hocking Valley Community Hospital filed a Petition for Panel Rehearing on February 29, 2004, which was denied by the Sixth Circuit Court of Appeals on March 9, 2004.

Statement of Facts

During the mid-1990s, both Ruth Edwards and her husband, Thomas Edwards, received medical services from Hocking Valley Community Hospital. The Plaintiffs requested that the hospital consolidate their hospital bills. However, after the Plaintiffs defaulted on their consolidated medical bills, Hocking Valley Community Hospital, by and through Defendant McCormick, filed a lawsuit against the Edwardses for unpaid medical bills. A default judgment was entered against the Edwardses and a judgment lien was placed on their property on December 14, 1998.

Approximately one year later, on December 13, 1999, Plaintiff Ruth Edwards filed a class-action complaint in federal court against McCormick for allegedly threatening to foreclose on the Plaintiffs' home in violation of 15 U.S.C. §§ 1292k et seq., the Fair Debt Collection Practices Act, and against Hocking Valley Community Hospital for

consolidating Plaintiffs' credit in violation of the ECOA. Pursuant to the court's orders, the parties engaged in settlement negotiations and soon prepared a written draft of the Proposed Stipulation of Settlement for the court's approval. This initial settlement agreement prohibited Hocking Valley Community Hospital from combining spousal accounts for any reason unless the parties expressly, knowingly, and voluntarily agreed to the combination.

Hocking Valley Community Hospital, however, refused to complete and finalize the Proposed Stipulation of Settlement because the hospital was informed that the proposal unequivocally conflicted with Ohio law. In particular, the prohibition contained in the proposal preventing the hospital from combining patient accounts under certain circumstances was in direct conflict with Ohio Rev. Code § 3103.03 and *Ohio State University Hospital v. Kinkaid*, 48 Ohio St. 3d 78, 549 N.E.2d 517, *reh'g denied*, 49 Ohio St. 3d 713, 552 N.E.2d 951 (1990). Thereafter, the parties' respective counsel attempted to remedy the legal conflict by modifying Exhibit A to the Proposed Stipulation of Settlement so as to track the Ohio statute and to except from the general prohibition against the combining of accounts the specific circumstances permitted by Ohio statutory and common law.

Significantly, however, the parties failed to also modify the main settlement document so that it would be consistent with and reflect the changes in Exhibit A to the settlement. The modification of Exhibit A, without also modifying the underlying settlement agreement, resulted in irreconcilable inconsistencies between the two documents, effectively rendering the agreement meaningless. The inconsistencies can be explained as follows. The settlement agreement plainly prohibits the hospital from collecting one spouse's account from the other spouse when the spouse receiving the medical services is unable to pay for the services received. Amended Exhibit A, however, *permits* the hospital to collect against the

nonpatient spouse when the spouse receiving medical care is unable to pay for said services pursuant to Ohio statutory and common law.

Notwithstanding this obvious conflict and Hocking Valley Community Hospital's Notice of Withdrawal, Edwards filed a motion seeking approval by the court of the faulty Proposed Stipulation of Settlement, and the trial court filed an Order approving the faulty and unenforceable Proposed Stipulation of Settlement. The court also refused to reform the main body of the Proposed Stipulation of Settlement so that it would be consistent with amended Exhibit A, Ohio law, and the intent of the parties. The Sixth Circuit Court of Appeals affirmed the federal district court's decision and denied Hocking Valley Community Hospital's petition for a rehearing.

ARGUMENT

I. THE SIXTH CIRCUIT COURT OF APPEALS ERRED BY DEPARTING FROM THE DOCTRINE OF *ERIE R.R. v. TOMPKINS* BY REFUSING TO APPLY STATE LAW AND BY DEPARTING FROM BASIC JUDICIAL PRINCIPLES WHEN IT FAILED TO ORDER THE STATE-MANDATED EVIDENTIARY HEARING TO RESOLVE THE CONFLICTS OVER THE MEANING OF THE AMBIGUOUS SETTLEMENT AGREEMENT.

A. Ohio State Law Mandating Evidentiary Hearings Was Ignored By The Federal Courts.

The Supreme Court of the State of Ohio ruled in *Rulli v. Fan Co.*, 79 Ohio St. 3d 374, 683 N.E.2d 337 (1997), that whenever a contract in dispute is ambiguous in its meaning and intent such that a material issue of fact exists, the court *must* hold an evidentiary hearing to settle the factual issues prior to entering judgment. In that case, as in the instant case, the contract in dispute was a settlement agreement. Opining that the law disfavors court enforcement of contracts laden with uncertainty, the Ohio Supreme Court held:

> A trial judge cannot . . . force parties into settlement. . . . To constitute a valid settlement agreement, the terms of the agreement must be reasonably certain and clear. . . . "It is not enough that the parties think that they have made a contract. . . . Vagueness of expression, indefiniteness and uncertainty as to any of the essential terms of an agreement, have often

> been held to prevent the creation of an enforceable contract."

79 Ohio St. 3d at 376 (quoting 1 *Corbin on Contracts* § 4.1 (rev. ed. 1993) (footnote omitted)).

Under Ohio law, therefore, a valid and enforceable settlement agreement must be reasonably clear and certain. The Ohio courts will not enforce a settlement agreement which is laden with ambiguity. Indeed, the law in Ohio requires that no ambiguities exist within the terms of the settlement agreement and therefore requires an evidentiary hearing to resolve any confusion or doubt between the parties to a settlement. Specifically, the Ohio Supreme Court in *Rulli v. Fan Co.* states:

> Where parties dispute the meaning or existence of a settlement agreement, a court may not force an agreement upon the parties. To do so would be to deny the parties' right to control the litigation, and to implicitly adopt . . . the interpretation of the one party, rather than enter judgment based upon a mutual agreement. . . .
>
> Where the meaning of terms of a settlement agreement is disputed, or where there is a dispute that contests the existence of a settlement agreement, a trial court must conduct an evidentiary hearing prior to entering judgment.

79 Ohio St. 3d at 377 (citations omitted); *see also Mandalawala v. Zaleski*, 124 Ohio App. 3d 321, 706 N.E.2d 344 (1997) (holding that the Ohio trial court is required to hold an evidentiary hearing regarding factual disputes over agreement); *Kukla v. National Distillers Products Co.*, 483 F.2d

619 (6th Cir. 1973) (holding that summary enforcement of the alleged settlement agreement was improper where a substantial factual dispute existed and an evidentiary hearing should have been held).

The Sixth Circuit Court of Appeals acknowledges that where material facts about an agreement are in dispute the court is compelled to hold an evidentiary hearing under Ohio law to determine the true intent of the parties to the agreement. (*See* A-10 (citing *Re/Max International, Inc. v. Realty One, Inc.*, 271 F.3d 633, 645 (6th Cir. 2001), *cert. denied*, 535 U.S. 987 (2002)).) Remarkably, however, the Sixth Circuit completely departed from the stated judicial standards and refused to order such a hearing despite the fact that the settlement agreement at issue is unequivocally ambiguous as a result of the inconsistency between the Stipulation of Settlement and Exhibit A to the Stipulation.

The ambiguity is obvious because the parties did not possess the same contractual intent with respect to the Stipulation of Settlement as they did with respect to amended Exhibit A. As Circuit Judge Ryan opined in his dissenting opinion:

> Here, the settlement agreement is indeed "susceptible to two . . . reasonable interpretations." *Id.* The Stipulation provides, in relevant part, that Hocking Valley Community Hospital (Hocking) may not hold spouses jointly liable for charges attributable to one of them without the written consent of both. Modified Exhibit A, on the other hand, provides, in relevant part, that Hocking may hold spouses jointly liable for some (necessary) medical care charges attributable to one of them, without the written consent of both. Aside from other difficulties, this ambiguity

> produces a *manifestly absurd result*. . . . The operative rule of logic here is that a thing cannot be and not be at the same time.

(A-10 (emphasis added).)

Specifically, an examination of the documents reveals that under the main body of the Stipulation, at Section D, Hocking Valley Community Hospital is prohibited from requiring joint spousal liability for medical care of one spouse and collecting or attempting to collect individual accounts owed from another. This prohibition is inconsistent with Ohio Rev. Code § 3103.03 and modified Exhibit A, which *allow* a creditor to collect or attempt to collect individual accounts owed by one spouse from another when the primarily obligated spouse is unable to pay for said account and the products and/or services provided to the primarily obligated spouse are necessaries, as they are here. Modified Exhibit A reflects and tracks the language in O.R.C. § 3103.03 and specifically states that one spouse *may be responsible* for payment of the other spouse's account under such circumstances. The main body of the Stipulation of Settlement, however, does not track the language of the statute. To the contrary, it contravenes the Ohio statute by providing that Hocking Valley Community Hospital is prohibited from requiring joint spousal liability or medical care of one spouse and collecting or attempting to collect individual accounts owed from another.

Modified Exhibit A and the main body of the Stipulation of Settlement are, therefore, plainly irreconcilable. The Stipulation of Settlement is substantively ambiguous, rendering an evidentiary hearing necessary under Ohio law to determine whether the settlement agreement is even enforceable or is subject to reform. Because of the substantive conflict in the settlement agreement, Hocking Valley Community Hospital refused to consent to the Proposed

Stipulation of Settlement. The hospital stated clearly to the trial court that the proposed agreement failed to take into full consideration the implication and applicability of O.R.C. § 3103.03 and *Ohio State University Hospital v. Kinkaid*, 48 Ohio St. 3d 78, 549 N.E.2d 517, *reh'g denied*, 49 Ohio St. 3d 713, 552 N.E.2d 951 (1990).

In *Ohio State University Hospital*, the Ohio Supreme Court interpreted § 3103.03 broadly, holding that a wife is liable, under the statute, for the payment of her spouse's hospital and medical expenses where the husband's assets are insufficient to pay the expenses *even though* the wife did not contract for medical services and did not pledge her own credit. Edwards, however, did not understand that the changes to Exhibit A allowed the hospital to combine and collect one spouse's account from another spouse under certain circumstances in accordance with the Ohio statute and *Ohio State University Hospital* because the Proposed Stipulation of Settlement, itself, was not modified and did not clarify the existing law.

With no regard for their obligation to apply and enforce state substantive law, the federal district court and the Sixth Circuit Court of Appeals refused to apply Ohio state law on contract construction and therefore failed to comprehend the inherent and blatant conflict between the Stipulation of Settlement and Revised Exhibit A and the resulting lack of agreement between the parties. The federal district court held that the document was not ambiguous and that no evidentiary hearing was necessary. The Sixth Circuit Court of Appeals affirmed. These rulings depart substantially from approved and well-established judicial precedent and should be reversed.

B. The Federal Courts Failed To Apply Ohio Contract Construction Law To The Ambiguous Settlement Agreement.

The *Rulli* rule on the necessity of holding an evidentiary hearing is triggered when a contract is ambiguous. Under Ohio law, a contract is ambiguous if it is susceptible to two or more reasonable interpretations. Whether a contract is considered to be ambiguous is considered a function of law for the court to decide. *Lincoln Electric Co. v. St. Paul Fire & Marine Insurance Co.*, 210 F.3d 672 (6th Cir. 2000). Once an ambiguity is determined, a question of fact arises to resolve the uncertainty, and extrinsic evidence may be admitted to resolve the intent of the parties. In the instant case, both the federal district court and the Sixth Circuit Court of Appeals erroneously determined that the Stipulation of Settlement was clear and unambiguous. This was because both federal courts ignored and refused to apply clear state law mandates on contract construction and, particularly, the common-law standards for determining contract ambiguity.

Determining the parties' intent to a contract is the cardinal rule of contract construction. *Blanchard Valley Farmers Coop, Inc. v. Caril Niese & Sons Farms, Inc.*, 143 Ohio App. 3d 795, 758 N.E.2d 1238, *appeal not allowed*, 93 Ohio St. 3d 1452, 756 N.E.2d 116 (2001). In ascertaining the intent of the contract and whether an ambiguity exists, the contract should be interpreted as a whole, and all writings that are part of the same transaction should be interpreted together. *Abrams & Tracy, Inc. v. Smith*, 88 Ohio App. 3d 253, 623 N.E.2d 704 (1993); *see also Mon-Rite Construction Co. v. Northeast Ohio Regional Sewer Dist.*, 20 Ohio App. 3d 255, 485 N.E.2d 799 (1984) (holding that when deciding whether a contract is ambiguous the court is required to construe all parts of the contract and no one provision maybe disregarded because it is inconsistent with another part). In the instant case, therefore, the federal courts were required to determine that

ambiguity existed by interpreting the Stipulation of Settlement and revised Exhibit A together.

The test for determining ambiguity is that common words in a written contract will be given their ordinary meaning. *McConnell v. Hunt Sports Enterprises*, 132 Ohio App. 3d 657, 725 N.E.2d 1193 (1999). Thus, where a contract contains terms which may not be clear, the court will determine ambiguity by giving the words and terms their plain meaning. *Allied Moulded Products, Inc. v. Keegan*, 81 Ohio App. 3d 424, 611 N.E.2d 377 (1992). This judicial principle requires a court to ascertain the intent of the parties from the language of the instrument itself. The court is precluded from supplying implications which are not consistent with the express terms of the contract. *Hamilton Insurance Services, Inc. v. Nationwide Insurance Cos.*, 86 Ohio St. 3d 270, 714 N.E.2d 898, *reconsideration denied*, 87 Ohio St. 3d 1421, 717 N.E.2d 1107 (1999).

In *Shifrin v. Forest City Enterprises, Inc.*, 64 Ohio St. 3d 635, 597 N.E.2d 499 (1992), the Ohio Supreme Court stated that extrinsic evidence may only be employed by a court interpreting a contract where the court has determined that the terms in the contract are ambiguous. Significantly, contrary to the Sixth Circuit Court of Appeals' decision, under Ohio law, extrinsic evidence should not be considered to demonstrate whether ambiguity exists. 597 N.E.2d at 501. Further, the court explained that "[w]hen the terms in a contract are unambiguous, courts will not in effect create a new contract by finding an intent not expressed in the clear language employed by the parties." *Id.* (citing *Alexander v. Buckeye Pipe Line Co.*, 53 Ohio St. 2d 241, 374 N.E.2d 146, 150 (1978)).

Despite these state law mandates, both the federal district court and the Sixth Circuit Court of Appeals refused to apply them. These courts erred in failing to construe all parts

of the Stipulation of Settlement, including Modified Exhibit A, together as one unit. The Stipulation of Settlement was originally drafted before the parties understood the applicability of O.R.C. § 3103.03 to the settlement terms. It states under paragraph D that Hocking Valley Community Hospital is prohibited from combining accounts or collecting or attempting to collect individual accounts owed by one spouse from another unless each spouse agrees to combining the accounts. Modified Exhibit A properly tracks O.R.C. § 3103.03, and rather than stating that "you *cannot* be required to combine individual accounts," which is consistent with the body of the Stipulation, amended Exhibit A states that accounts may be combined as provided under O.R.C. § 3103.03. Modified Exhibit A states that combining the accounts into a single joint account means that both spouses are legally responsible to pay all of the accounts, which is inherently inconsistent with the body of the Stipulation.

To avoid what Circuit Judge Ryan stated was a manifestly absurd result, the federal courts in the instant case should not be permitted to contort the language of the Stipulation and Modified Exhibit A but should instead properly apply state law. If the state law had been applied, an evidentiary hearing on the ground that a clear ambiguity exists would have determined the true intent of the parties.

Further, both the district court and the Sixth Circuit erred in ignoring the Ohio Supreme Court's clear mandates for determining ambiguity set forth in *Shifrin v. Forest City Enterprises, Inc.* As Circuit Judge Ryan correctly states in his dissenting opinion, the courts wrongly resolved the ambiguity issue by construing the phrase "to the extent possible" in revised Exhibit A to mean "to the extent possible under law," in defiance of the rule of law stated above that ambiguity must be determined by giving the words in a contract their plain meaning. This sort of judicial interpretation is only acceptable once ambiguity has been declared. *Logsdon v. Fifth Third Bank,*

100 Ohio App. 3d 333, 654 N.E.2d 115, 118 (1994). Moreover, as Judge Ryan states, the court's interpretation of the phrase "to the extent possible" was derived from Edwards's attorney's oral argument statement and not from the four corners of the agreement, as required by law. Furthermore, the statutory language, which the phrase reflects, does not support the court's interpretation, but instead states "[i]f a married person is unable to do so, the spouse of the married person must assist in the support *so far as the spouse is able*." O.R.C. § 3103.03(A) (emphasis added). Likewise, *Ohio State University Hospital v. Kinkaid*, 549 N.E.2d at 519, the definitive judicial statement on the statute, explains that the statute provides that "where a husband is unable to provide for his own support, pursuant to R.C. § 3103.03, a wife must aid in the support of her husband *to the extent that she is able*" (emphasis added). Therefore, it appears that revised Exhibit A was intended to mean "to the extent the spouse is able" *not* "to the extent possible under law," as the federal courts imposed on the parties.

Whatever was intended, the noticeable flaw in the federal courts' analysis is the obvious fact that the intent of the parties to the settlement agreement is susceptible to more than one meaning and is therefore ambiguous. The federal courts were not permitted under Ohio law to interpret the settlement agreement and insert implied terminology which was not plainly included within the four corners of the agreement. Furthermore, as Circuit Judge Ryan states, the Sixth Circuit Court of Appeals never properly addressed the issue of ambiguity as the inconsistency within the agreement itself. (*See* A-10.) As written, the agreement, taken as a whole, does not express the intent of the parties regarding Hocking Valley Community Hospital's authority to impose spousal joint liability. Furthermore, under Ohio law, as clearly outlined in *Rulli v. Fan Co.*, the settlement agreement cannot be enforced. The federal courts departed from established judicial precedent by not requiring an evidentiary hearing to resolve

the confusion and uncertainty that shrouds the Stipulation of Settlement.

C. The Sixth Circuit's Decision Violates The *Erie* Doctrine.

The district court's and Sixth Circuit Court of Appeals' attempt to quash ambiguity from the documents by imposing their own creative interpretation cannot be tolerated by this Court. The practice used by the federal courts overtly ignores state law, and this approach to judicial decisionmaking flies in the face of the fundamental rule of law set forth in *Erie R.R. v. Tompkins*, 304 U.S. 64 (1938), and its progeny.

While the *Erie* doctrine was established in a diversity jurisdiction setting, it is applicable here because the federal courts were required to apply the judicial principles established under state law. *Erie* dictates that federal courts are required to apply substantive state law, and the federal courts are obligated to ascertain what the law is and how to apply it. In *Ventura v. The Cincinnati Enquirer*, 246 F. Supp. 2d 876 (S.D. Ohio 2003), the federal court appropriately recognized that the federal court *must* apply Ohio law in the action as required by *Erie*. *See also ACME Roll Forming Co. v. Home Insurance Co.*, 31 Fed. Appx. 866 (6th Cir. 2002) (holding that in construing issues of state law the federal court must apply state law in accordance with the controlling decisions of the highest court of the state).

Under the basic principles of comity, federal courts must defer to state courts' judgments on issues of state law. *See also Garraway v. Diversified Material Handling, Inc.*, 975 F. Supp. 1026 (N.D. Ohio 1997) (holding that, in construing questions of state law, federal district courts sit as state courts and must apply state law in accordance with the controlling decisions of the highest court in the states). In this case, both the federal district court and the Sixth Circuit Court of

Appeals departed from these general judicial standards and instead illogically construed the Stipulation of Settlement into unambiguousness. Under basic Ohio judicial standards, however, the Stipulation and revised Exhibit A are plainly irreconcilable, ambiguous, and unenforceable as read.

This Court is urged to grant this Petition for Certiorari to preclude the federal courts from ignoring their mandate to apply state law. Furthermore, the Ohio law on contract construction and the rules determining ambiguity are well developed and established. This Court is asked to resolve this blatant departure from the requirement federal courts have to apply state law and to require the federal courts to respect the fundamental judicial state and federal systems.

II. THE SIXTH CIRCUIT COURT OF APPEALS ERRED BY REFUSING TO APPLY BASIC STATE LAW PRINCIPLES TO REFORM THE SETTLEMENT AGREEMENT TO REFLECT THE ACTUAL INTENT OF THE PARTIES.

The Sixth Circuit Court of Appeals erred in affirming the lower court's decision and refusing to allow either party to reform the Stipulation of Settlement to conform with the previously amended Schedule A. Without the simple reform urged by Hocking Valley Community Hospital, the settlement agreement is inherently inconsistent. Specifically, Hocking Valley sought to reform Section D of the Stipulation and Settlement to reflect the applicability of O.R.C. § 3103.03 and *Ohio State University Hospital v. Kinkaid.* The reformation urged by Hocking Valley Community Hospital, but rejected by the trial court and the Sixth Circuit Court of Appeals, would have rendered the settlement agreement enforceable under Ohio law. *See Rulli v. Fan Co.*, 79 Ohio St. 3d at 376 ("[T]he law disfavors court enforcement of contracts laden with ambiguity.... Courts should be particularly reluctant to

enforce ambiguous or incomplete contracts that aim to memorialize a settlement agreement between adversarial litigants. . . . Judges should make certain the terms of the agreement are clear, and that the parties agree on the meaning of those terms").

Reformation is a remedy under Ohio law, available on grounds of mutual mistake, unilateral mistake, or fraud, whereby an agreement is corrected to reflect the intent of the parties. *Lincoln Electric Co. v. St. Paul Fire & Marine Insurance Co.*, 10 F. Supp. 2d 856 (N.D. Ohio 1998), *aff'd in part, rev'd in part*, 210 F.3d 672 (6th Cir. 2000). In *Hughes v. Cardinal Federal Savings & Loan Ass'n*, 566 F. Supp. 834 (S.D. Ohio 1983), a case factually similar to the instant case, the court concluded that certain home-financing loan agreements were ambiguous. In fact, consistent with the defendants' argument, the court concluded that the agreements contained a clear typographical error and did not accurately reflect the defendants' understanding of the agreement. In addition, the court held that, by virtue of mutual mistake, the language of the loan agreements was inconsistent with the other provisions of the parties' agreements *and* inconsistent with normal banking practices. For these reasons, the contract was subject to reformation to reflect the actual agreement between the parties. In *Castle v. Daniels*, 16 Ohio App. 3d 209, 475 N.E.2d 149 (1984), the court held that mutual mistake of a deed agreement required reformation of the deed to reflect the intentions of the party. In making this determination, the court relied on the testimony of the parties, the course of dealing between the parties, and the method in which the transaction was handled.

In the instant case, it is evident from the prior negotiations between the parties and their course of dealings, particularly after Exhibit A was revised, that the parties intended to make their settlement agreement consistent with Ohio statutory law. Yet, the inherent language inconsistencies

between the text of the Stipulation of Settlement and revised Exhibit A demonstrate that the purported agreement does not adequately reflect the intent of the parties to the agreement. Specifically, the purported agreement does not reflect the original stated intent of the parties with respect to Hocking Valley Community Hospital's ability to combine and collect one spouse's account from another spouse in certain circumstances in accordance with Ohio law. Amended Exhibit A unequivocally expresses the parties' intent to amend the substance of the Stipulation and Settlement in such a way so as not to prohibit from combining and collecting one spouse's account from another spouse under certain circumstances, as provided under O.R.C. § 3103.03 and *Ohio State University Hospital v. Kinkaid.*

Only by reforming the text of the Stipulation of Settlement to conform to revised Exhibit A can the agreement be harmonized. If there are grounds for not sending this matter to the trial court for an evidentiary hearing, the federal courts should have allowed the agreement to be reformed. The Sixth Circuit Court of Appeals erred and departed from established judicial practices when it refused to reform the Stipulation of Settlement in light of the obvious mutual mistake of the parties in not completing the revisions to the agreement and in failing to conform revised Exhibit A to the main body of the Stipulation.

CONCLUSION

For all of the foregoing reasons and based on the authorities presented, the Petitioner, Hocking Valley Community Hospital, requests this Court to grant its Petition for Writ of Certiorari.

Respectfully submitted,

Yale R. Levy, Esquire
Pope & Levy Co., LPA

Counsel of Record for Petitioner

No. _____

In The Supreme Court of the United States

HOCKING VALLEY COMMUNITY HOSPITAL,

Petitioner,

v.

RUTH EDWARDS, et al.,

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

APPENDIX

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

RUTH EDWARDS, ET AL.,	:	Case No. C2-99-1343
	:	JUDGE MARBLEY
Plaintiffs,	:	
	:	MAGISTRATE JUDGE KING
v.	:	
	:	
JACK E. McCORMICK, ET AL.,	:	
	:	
	:	
Defendants.	:	

OPINION & ORDER

I. INTRODUCTION

This matter is before the Court on the Notice of Withdrawal of the Proposed Stipulation of Settlement or Motion for Reformation of the Proposed Stipulation or Settlement filed by Defendant Hocking Valley Community Hospital ("Hocking Valley"). In response to Defendant's Motion, which was filed on January 26, 2001, Plaintiffs filed a Motion to Enforce Settlement on February 22, 2001.

II. FACTS

On December 13,1999, Plaintiff Ruth Edwards filed a Complaint against Defendants Jack E. McCormick, a debt collector, and Hocking Valley.[1] The Complaint was filed on

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[1]Defendant McCormick is not involved in the present action. All further references to "Defendant" will be to Defendant Hocking Valley.

Plaintiffs own behalf, on behalf of the estate of Thomas C. Edwards, Plaintiff's deceased husband, and as a class action on behalf of others similarly situated.[2] The Complaint alleges that Defendant engaged in debt collection practices in violation of the Equal Credit Opportunity Act, 15 U.S.C. § 1691 ("ECOA").

On October 23, 2000, Plaintiff and Defendant Hocking Valley submitted to the Court a Proposed Stipulation of Settlement, which the Court approved. Thereafter, on November 15, 2001, an Amendment to the Settlement Agreement was offered by the parties and approved by the Court. During the period in which the parties entered into the original Settlement Agreement and its Amendment, Defendant was represented by counsel Margaret R Carmany. On January 26, 2001, however, Defendant obtained new counsel and filed the instant Notice of Withdrawal/Motion for Reformation.

III. STANDARD OF REVIEW

A federal district court has inherent power to enforce a settlement agreement. *Brock v. Scheuner Corp.*, 841 F.2d 151, 154 (6th Cir. 1988); *Bowater N. Am. Corp. v. Murray Mach., Inc.*, 773 F.2d 71, 76-77 (6th Cir. 1985). When enforcing an agreement, "[t]he court must enforce the settlement as agreed to by the parties and is not permitted to alter the terms of the agreement." *Brock*, 841 F.2d at 154; *See also Downey v. Clauder*, 811 F. Supp. 338, 339 (S.D. Ohio 1992). It is an issue of fact for the Court, however, to construe the intentions of the parties when entering into a settlement agreement. *Brown v. County*

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[2]Class certification was denied by Order dated October 31. 2000.

of Genesee, 872 F.2d 169, 174 (6th Cir. 1939) (per curiam); *Brock*, 841 F.2d at 154. The construction and interpretation of a settlement agreement is governed by contract law. *Sault Ste. Marie Tribe of Chippewa Indians v. Engler*, 146 F.3d 367, 372 (6th Cir. 1998). When construing a settlement agreement, a federal district court must apply the law of the state where the contract was formed.[3] *Id.*

Ohio law establishes that the intentions of the parties when entering into a settlement agreement should be interpreted "from the perspective of a reasonably intelligent person acquainted with the contemporary circumstances." *Downey*, 811 F. Supp. at 339 (citing *Firestone Tire and Rubber Ca. v. United States*, 444 F.2d 547, 551 (Ct. Cl. 1971)). The intent of the parties must be ascertained by looking at the four comers of the document, or the document as a whole. *Alvin, Ltd. v. United States Postal Serv.*, 816 F.2d 1562, 1565 (Fed. Cir. 1987) (quoting *Kenneth Reed Constr. Corp. v. United States*, 475 F.2d 583, 586 (Ct. Cl. 1973)). Furthermore, the party moving the Court to interpret the contract, whether it be for the ultimate goal of enforcement or rescission, has the burden of proving by clear and convincing evidence the intentions of the party. *Anschutz v. Radiology Assoc. of Mansfield; Inc.*, 827 F. Supp. 1338, 1344 (N.D. Ohio 1993) (burden of proof on moving party requesting judicial enforcement of agreement); *General Tire, Inc. v. Mehlfeldt*, 691 N.E.2d 1137, 1136 (Ohio Ct. App. 1997)

---

[3]An alternative in determining the applicable law is to follow the choice of law provisions of the forum state. This Court's decision to apply the law from the state in which the contract was formed, however, is the better choice in cases such as this one where the agreement has been presided over by the Court, the case initially came before the Court on federal question jurisdiction (rather than diversity), all parties concerned are residents of or domiciled in Ohio, and the contact was formed and to be executed in Ohio.

(burden of proof on party requesting reformation of the contract).

IV. ANALYSIS

Defendant's argument for rescission or reformation is three-fold. Fast Defendant argues that substantive inconsistencies exist between the original settlement document and the amended text, constituting patent ambiguities such that the contract should be rescinded or reformed. Specifically, Defendant alleges that the language in the original Settlement Agreement which, following ECOA, prohibits Defendant from pursuing or requiring joint spousal liability for the medical debts of a spouse,[4] contravenes the language in the amended agreement, which, following the language in Ohio Revised Code section 3103.03, states: "under Ohio law, even if separate accounts are created for each of us, the other spouse may be responsible for payment, to the extent possible, if that spouse has neglected to provide support for necessaries to the spouse whose account has been created." Defendant argues that this inconsistency prohibits enforcement of the settlement agreement because the ambiguity renders it susceptible to differing interpretations.

Second, Defendant argues that the alleged inconsistency in the language between the original settlement agreement and its amendment evidences a mutual mistake of the parties, causing there to be no meeting of the minds on the agreement. To this end, Defendant alleges that the settlement was "improvidently" entered into before both Defendant and Plaintiff were aware of the applicability of Ohio Revised Code

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[4]The original settlement agreement provides that, by signing the agreement, one "cannot be asked or required to combine individual patient accounts or assume joint liability for [one's] spouse's account by the Hospital."

section 3103.03, Ohio case law (*University Hosp. v. Kinkaid*, 549 N.E.2d 517 (Ohio 1990)), and Sixth Circuit case law (*Lewis v. ACB Business Services, Inc.*, 135 F.2d 389 (6th Cir. 1998)). Defendant argues that the alleged inconsistencies would effectively bar it from enforcing its rights under the agreement, a result not intended by either party at the time in which the agreement was entered.

Finally, Defendant argues that if the Court finds that there did not exist a mutual mistake in this case, there was a unilateral mistake on the part of the Defendant in that Defendant was not aware of the applicability of the above-cited case law and statutory authority. Defendant alleges that Plaintiff was aware of these materials at the time of the settlement and alerted neither the Court nor Defendant of their applicability to the present case.

Plaintiff argues that the settlement agreement is not ambiguous and constitutes a meeting of the minds of the parties. Plaintiff argues that the phrase "to the extent possible" in the amended agreement cures any conflict in the language of the agreement because it provides that the language stating that Defendant may be able to hold one spouse responsible for the medical debts of the other is valid only inasmuch as it is not preempted by federal law—in this case, ECOA. Plaintiff further alleges that there was no mistake by either party when entering into the settlement agreement.

A. Ambiguity

An ambiguity is present in a contract when "a term cannot be determined from the four corners of the agreement or where contract language is susceptible to two or more reasonable interpretations." *Potti*, 938 F.2d at 647. Fundamental to the construction of a contract, however, is the principle that "an interpretation which gives a resonable, lawful, and effective meaning to all the terms is preferred to

an interpretation which leaves a part of the contract unreasonable, unlawful, or of no effect." *Id.* (citing *Alvin*, 816 F.2d at 1564). In this case, Defendant concedes that the settlement agreement is not illegal, but contends that the language of the agreement is so inconsistent and ambiguous as to constitute a nullity. Essentially, Defendant claims that the agreement is inconsistent because the language in the original text of the agreement prohibits Defendant from collecting a debt of one spouse from another and the language of the amended text indicates that collection from a spouse for the other's necessaries, including medical care, is allowed.

Defendant's interpretation of the language fails to account for the role that the phrase "to the extent possible" plays in the amended agreement. This phrase modifies the sentence that purports to allow collection of debts of a spouse, and works to qualify this right of collection *to the extent possible under law*. The insertion of this phrase, then, is a mechanism for guidance in exactly the type of situation that Defendant is alleging is ambiguous here: if it is found that there is a conflict of laws pertaining to Defendants right to collect a debt from a spouse, then Ohio law only controls only *to the extent* that it is not preempted by federal law. Because this is a reasonable interpretation of the agreement, giving effect to a lawful, valid contract between parties, Defendants ambiguity-based argument fails.

B. Mutual Mistake

Reformation of a contract is available to remedy a mutual mistake. *General Tire*, 691 N.E.2d at 1136. Mutual mistake occurs when there is a "mistake of all parties to the contract. Reformation is available when it is shown that the written instrument does not express the true agreement entered into between the contracting parties by reason of mistake common to them." *Wagner v. National Fire Ins. Co.*, 8 N.E.2d 144, 148 (Ohio 1937). Rescission of a contract because

of mutual mistake may also occur when "there is a mutual mistake as to the material part of the contract and where the complaining party is not negligent in failing to discover the mistake." *Reilley v. Richards*, 632 N.E.2d 507, 509 (Ohio 1994). The party seeking to prove mutual mistake has to defeat, by clear and convincing evidence, the presumption that the parties have "entered into a valid and binding contract." *Alvin*, 816 F.2d at 1564.

In its Memorandum Contra To Plaintiff's Motion To Enforce Settlement, Defendant alleges that at the time the settlement agreement was executed by the parties, neither party was aware of Ohio Revised Code section 3103.03 or its applicability to the present case. Defendant father alleges that this mistake is material to the agreement because it extinguishes Plaintiff's claim against Defendant. Plaintiff denies these allegations. Defendant as bearer of the burden of proof, has not presented any competent evidence to the Court to prove that any alleged mistake was made by both parties. The Court notes that the language complained of in the amended section of the agreement uses the same terminology as Ohio Revised Code section 3103.03, indicating that at least one party to the agreement knew of its existence and used it as a basis in forming the amended section of the agreement.

At oral argument, Defendant also claimed that both parties were mistaken when they amended the agreement with language that contradicts the stipulation in the original agreement prohibiting Defendant from collecting medical debts from a patient's spouse. Plaintiff denies that any mistake was made, and claims that the phrase "to the extent of" was expressly added to remedy any contradiction in the terms. Again, Defendant offers no competent evidence to prove its allegations of mistake. Absent any such evidence, Defendant's claim of mutual mistake fails.

C. Unilateral Mistake

A unilateral mistake exists "when one party recognizes the true effect of an agreement while the other does not." *General Tire*, 691 N.E2d at 1136. Generally, a unilateral mistake is not a sufficient basis to "allow a mistaken party to limit or avoid the effect of an otherwise valid settlement agreement." *Brown*, 872 F.2d 169, 174; *See also General Tire*, 691 N.E.2d at 1136. Indeed, the Ohio Supreme Court has held that a unilateral mistake does not justify reformation of a contract. *Bellish v C.I.T. Corp.*, 50 N.E.2d 147, 151 (Ohio 1943). In select circumstances, a unilateral mistake may justify rescission of a contract. *Spitzer Hardware & Supply Co. v. Dever*, 227 N.E.2d 660, 662 (Ohio Ct. App.1967). A unilateral mistake will not justify relief, however, where the mistake is the result of the party's own negligence. *Carrucci v. John Hancock Mut. Life Ins.*, 238 N.E.2d 572, 574 (Ohio Ct. App. 1968).

Defendant alleges that there was a unilateral mistake on its part because it was unaware of the applicability of the Ohio Revised Code section 3103.03 to the instant case. Defendant also alleges that Plaintiff was aware of the statute and did not inform Defendant of its existence. Defendant's position is problematic in two respects. First, even if Defendant was unaware of the Ohio Revised Code section 3103.03 at the time of entering into the agreement and Plaintiff was aware of it, it is not an opposing party's responsibility to inform a party of authority that may affect its rights. It was Defendant's responsibility to be aware of applicable law. Second, Defendant alleges mistake, but does not produce any evidence to the Court to prove such an allegation. Defendant does not provide the Court with any statement from the former counsel for Hocking Valley or any other proof that a mistake was in fact made in the execution of the agreement. The fact that Defendant's present counsel may believe that the contract entered into by Defendant's former counsel does not protect Defendant's interests as well as it could does not, in

itself, justify rescinding or reforming it. Thus, Defendant's based argument based on unilateral mistake fails.

VII. CONCLUSION

For the foregoing reasons, the Court DENIES Defendant's Notice of Withdrawal/Motion For Reformation in its entirety.

IT IS SO ORDERED.

s/s
ALGENON L. MARBLEY
UNITED STATES DISTRICT COURT

Dated: April 27, 2001

FILED
FEB 09 2004
NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

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NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 02-3362

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

AMENDED

RUTH ED WARDS, et al., *Plaintiffs-Appellees,*	)
v.	) On Appeal from the United States District Court for the Southern District of Ohio
HOCKING VALLEY COMMUNITY HOSPITAL, *Defendant-Appellant.*	)

Before: **BOGGS, Chief Judge, RYAN, Circuit Judge; and ROSEN, District Judge.***

*The Honorable Gerald E. Rosen, United States District Judge for the Eastern District of Michigan, sitting by designation.

PER CURIAM. Hocking Valley Community Hospital (Hocking) is appealing a district court order enforcing a settlement agreement between it and Ruth Edwards arising out of a class-action complaint filed by Mrs. Edwards, on behalf of Thomas C. Edwards, her deceased husband, and all others similarly situated, alleging that Hocking and its counsel, Jack McCormick, engaged in debt collection practices in violation of the Federal Fair Debt Collection Practices Act, 15 U.S.C. § 1692k *et seq.* (FDCPA), the Equal Credit Opportunity Act, 15 U.S.C. § 1691 *et seq.* (ECOA), and the Ohio Consumer Sales Practices Act, O.R.C. §§ 1345.01 *et seq.* (Ohio Act). Specifically, Hocking claims that the district court erred in enforcing the settlement agreement and failing to hold an evidentiary hearing, where it alleges there was no evidence in the record confirming the existence of a settlement agreement, and a substantial dispute between the parties as to the terms of the agreement reached. In addition, Hocking contends that if we do find there to be an agreement, the agreement should be reformed in order to resolve inconsistencies that Hocking contends are inherent in the text of the settlement. For the reasons that follow, we affirm the district court's determination to enforce the amended settlement agreement, without reformation.

I

In October 1998, Jack McCormick. a debt collector and attorney for Hocking, initiated a legal action against Ruth Edwards for medical services and goods supplied to her husband on credit by the hospital. Two months later, a judgment lien was placed on Mrs. Edwards's real property in the amount of $7,058.88, plus interest at 10% a year and the costs of the action. McCormick sent a letter to Mr. and Mrs. Edwards, threatening foreclosure and the sale of their home unless they contacted him to arrange payment. The letter arrived the day before Mr. Edwards passed away and Mrs. Edwards was unable to pay the judgment.

Mrs. Edwards claims that McCormick was not authorized to sue her, or attach her property, for goods and services that were supplied to her husband. On December 13, 1999, Mrs. Edwards joined a class action complaint against McCormick and Hocking in district court. In that complaint, the plaintiff class argued that Hocking discriminated based on marital status and that Hocking knowingly committed unfair, deceptive, and unconscionable acts, based on the impermissible commingling of patient accounts. Mrs. Edwards also argued that McCormick violated the FDCPA and the Ohio Act in connection with the collection of debts by threatening to take action that could not legally be taken, using false representations and deceptive means to collect or attempt to collect a judgment, and illegally taking judgment against Mrs. Edwards for medical goods and services provided to Mr. Edwards.

Mrs. Edwards and Hocking entered into settlement discussions. Judge Marbley denied class certification on September 25, 2000, and two days later issued an order extending the settlement deadline until October 23, 2000. Mrs. Edwards and Hocking managed to come to some agreement and submitted to the court what will be called, for the sake of clarity, the Initial Settlement. However, this agreement was not signed by either party. The Initial Settlement included an Exhibit A, which was a form entitled "Voluntary Request for Combination Patient Accounts and Assumption of Joint Liability for Spousal Accounts." Exhibit A informed spouses as to their rights and also provided space for spouses signing the form to list their individual accounts and to state whether or not they wanted to combine those accounts into a joint account for which they assumed joint liability. In relevant part, the form stated as follows:

> We understand that only the spouse named on these individual accounts is now legally responsible to pay those accounts. We

> understand the Hospital will not and cannot hold one of us liable for the other's accounts unless we allow it to do so. We understand that combining these accounts into a single joint account means that both of us will become legally responsible to pay all those accounts, including after any divorce or separation, death or disability of the other spouse, or any other failure to pay.

Before this Initial Settlement was consummated, however, Hocking's counsel "discovered" an Ohio statute on point, O.R.C. § 3103.03, and caselaw dealing with that statute, *Ohio State University Hospital v. Kinkaid*, 549 N.E.2d 517 (Ohio 1990), which was thought to be generally favorable to Hocking. This law had been in existence throughout the parties' negotiations over the Initial Settlement, but it had not been brought up during the negotiations. O.R.C. § 3103.03, which is entitled "Duty of married person to support self, spouse, and children; duration of duty to support: third person's recovery of support; funeral expenses of spouse," states in relevant part:

> A) Each married person must support the person's self and spouse out of the person's property or by the person's labor. If a married person is unable to do so, the spouse of the married person must assist in the support so far as the spouse is able.
>
> . . .
>
> C) If a married person neglects to support the person's spouse in accordance with this section, any other person, in good faith, may supply the spouse with necessaries for the support of the spouse and recover the

> reasonable value of the necessaries supplied from the married person who neglected to support the spouse unless the spouse abandons that person without cause.

In the *Kinkaid* case, the "support" at issue was a husband's medical bills, incurred before his death. The Ohio Supreme Court held that if a husband is unable to pay for his own necessary medical support, a wife must aid in the support of her husband, to the extent that she is able, pursuant to O.R.C. § 3103.03.

Although Mrs. Edwards's counsel took the position that the ECOA, as recently amended, preempts O.R.C. § 3103.03, the parties nevertheless renegotiated Exhibit A and amended it as follows:

> *We understand that the Hospital is required by the federal Equal Credit Opportunity Act to create individual accounts for each spouse unless both spouses consent to a joint account. We further understand that under Ohio law, even if separate accounts are created for each of us, the other spouse may be responsible for payment, to the extent possible, if that spouse has neglected to provide support for necessaries to the spouse whose account has been created.* We further understand that if we agree to the combination of our accounts into a single joint account, both of us will become legally responsible to pay all of these accounts, including after any divorce, separation, death, or disability of the other spouse, or any other failure to pay, and regardless of whether there has been a neglect to support under Ohio Revised Code § 3103.03.

(emphasis added).

On November 15, 2000, Judge Marbley issued a "Stipulation of Substitution of Exhibit A to proposed stipulation of settlement between plaintiffs and defendant Hocking Valley Community Hospital." For the sake of clarity, we will refer to the settlement containing the amended Exhibit A as the Final Settlement. The entire text of the Final Settlement was not attached to Judge Marbley's order, only the amended Exhibit A. However, the Initial Settlement was clearly referenced in that order.[1] Hocking was represented by Margaret R. Carmany, who had represented Hocking throughout the negotiations, and Mrs. Edwards was represented by Gary M. Smith of the Equal Justice Foundation. Both parties' lawyers signed the stipulation to the amendment. which was accepted by Judge Marbley.[2]

---

[1]Judge Marbley's Order accepting the stipulation substituting Exhibit A into the Initial Settlement states as follows: "The parties hereby stipulate that the Proposed Stipulation of Settlement between Plaintiffs and Defendant Hocking Valley Community Hospital, previously submitted to this Court on October 23, 2000, shall be amended to include the attached Exhibit A in the place of the Exhibit A previously submitted."

[2]Hocking contends for the first time in this appeal that there is no evidence proving the existence of the Final Settlement. However, as discussed in Part III.A, the Stipulation of Substitution of Exhibit A to the Proposed Stipulation of Settlement between Plaintiffs and Defendant Hocking Valley Community Hospital, which constitutes the Final Settlement, was "approved by" Hocking's counsel Margaret R. Carmany, as evidenced by her signature, and admitted to by Hocking's new counsel in oral argument before the district judge on March 26, 2001.

On January 26, 2001, Hocking obtained new counsel and submitted a Notice of Withdrawal of Proposed Stipulation of Settlement or Motion for Reformation of the Proposed Stipulation of Settlement (the Notice of Withdrawal). In the Notice of Withdrawal, Hocking's new counsel argued that although the amendment to Exhibit A was intended to address the existence of O.R.C. § 3103.03 and the *Kinkaid* decision, it did not satisfactorily do so, as it was necessary to change the remaining text of the settlement agreement in order for the amended Exhibit A to make sense. On April 27, 2001, the district court denied Hocking's Notice of Withdrawal, finding that the agreement was not ambiguous and that the defendant did not present any evidence of a mutual mistake having occurred, which might justify reformation of the agreement. On February 20, 2002, Judge Marbley approved the Final Settlement.

II

Standard of Review

As a preliminary matter, the parties disagree on the standard of review to be applied by us in this case. Mrs. Edwards argues that we review a district court's decision to enforce an agreement for an abuse of discretion. Hocking argues that while we should review the district court's determinations of law *de novo*, we must uphold its factual findings unless they were clearly erroneous.

In fact, both parties are right to some extent. In *Therma-Scan, Inc. v. Thermoscan, Inc.*, 217 F.3d 414, 419 (6th Cir. 2000), we stated in no uncertain terms that upon review of a settlement agreement, we would affirm any findings of fact made by the district court unless clearly erroneous. In *Therma-Scan* we also addressed the question of whether our standard should be *de novo* or more deferential when reviewing a district court's enforcement of that same

settlement, and decided that the appropriate standard for reviewing a district court's decision to grant a motion to enforce a settlement would be an abuse of discretion. *Id.* at 418-19. Nevertheless, the district court will have abused its discretion if it improperly applied the law, used an erroneous legal standard, or committed a clear error of judgment. *RE/MAX Int'l, Inc. v. Realty One. Inc.*, 271 F.3d 633, 645 (6th Cir. 2001) (citing *Huey v. Stine*, 230 F.3d 226, 228 (6th Cir. 2000)).

III

In making the decision to enforce a settlement agreement, a district court must conclude that the parties have reached an agreement on all material terms. *Brock v. Scheuner Corp.*, 841 F.2d 151, 154 (6th Cir. 1988). Where facts material to an agreement are in dispute, an evidentiary hearing is generally compulsory. *RE/MAX Int'l*, 271 F.3d at 646 (citing *Kukla v. Nat'l Distillers Prods. Co.*, 483 F.2d 619, 622 (6th Cir. 1973)). However, no evidentiary hearing is required where an agreement is clear and unambiguous and no issue of fact is present. *Aro Corp. v. Allied Witan Co.*, 531 F.2d 1368, 1372 (6th Cir. 1976). Thus, summary enforcement of a settlement agreement, as in this case, is appropriate when there is no substantial dispute regarding the existence of the agreement and the terms are unambiguous. *Kukla*, 483 F.2d at 621; *Aro Corp.*, 531 F.2d at 1372.

A. Is there a substantial dispute as to the existence of an agreement?

Hocking admits in its brief that the Initial Settlement was submitted by both parties to Judge Marbley on October 23, 2000. It asserts, however, that the Initial Settlement "was never filed with the Court and is not, therefore, a part of the record." Appellant's Brief at 4. Hocking further contends that it "never approved" the Final Settlement. *Id.* at 8. Finally, Hocking argues that the district court had "no evidence at all before it in the record upon which to determine the existence

of a settlement agreement," and thus an evidentiary hearing was required, in order to determine the existence of an agreement between the parties. *Id.* at 9.

This argument is not persuasive. First, Hocking raises this issue for the first time on appeal and has, therefore, waived its right to argue this point on appeal. *See, e.g., United States v. Universal Mgmt. Servs., Inc.*, 191 F.3d 750, 758-59 (6th Cir. 1999). *See also Thurman v. Yellow Freight Sys.*, 97 F.3d 833, 835 (6th Cir. 1996) (holding that claims not raised before the district court must be considered waived). Hocking does not argue against the *existence* of the Final Settlement in either its Notice of Withdrawal, its Memorandum Contra to Plaintiff's Motion to Enforce Settlement with Defendant Hocking Valley Community Hospital, or even in its oral argument before the district court in support of its Notice of Withdrawal. In fact, nowhere in the record on appeal can we find that Hocking asked the district court to rule, as a matter of fact or law, that there was no evidence in the record to support the existence of the Final Settlement. Hocking's arguments were, instead, restricted to arguing that the agreement was internally inconsistent and moreover, did not fairly represent a "meeting of the minds" or comply with Ohio law. Therefore, we see no reason to entertain this new argument on appeal.

Furthermore, the record is replete with evidence of Hocking having approved the Final Settlement. First, Hocking has stated, in documents it filed with the court and in oral argument before the district court, that it submitted the Initial Settlement, although it did not ultimately sign the agreement, and thus there can be no doubt that when it approved the amendment to Exhibit A of the Initial Settlement, it was well aware of what that agreement contained. For example, in its Notice of Withdrawal, Hocking stated that the Initial Settlement "had been jointly presented to the Court by Defendant Hocking's previous counsel and Plaintiffs counsel." In its brief to this court, Hocking stated

that both counsel had "submitted" the Initial Settlement to Judge Marbley. Appellant's Brief at 4. Finally, Hocking's counsel stated in oral argument before the district court that "[o]n October 23 of 2000, a proposed settlement agreement was provided to this court by both of the parties."

Second, there is no question that on November 15, 2000, Hocking's counsel approved, however improvidently, Judge Marbley's Stipulation of the Final Settlement, which substituted the amended Exhibit A into the Initial Settlement, since Hocking's counsel's signature appears below the words "approved by:" on the page following Judge Marbley's order. In fact, at oral argument on this point, the following exchange took place:

> *The Court*: The thing that I was wondering as I reviewed these papers is why should I not give deference to what the parties intended? These were skilled lawyers, they knew what they were doing. I must presume that they understood the law and, you know, there was no mistaken application of the law. They quoted the statute in this subsequent revision. Why should I rescind this contract because you just disagree?
>
> *Hocking's Counsel*: Because both sides, your Honor, both the plaintiffs and the defendants and their counsel, agreed to modify Exhibit A to incorporate the Ohio Revised Code 3103.03 and the *Kinkaid* decision. This was not unilaterally done by the hospital. It was done by joint agreement.
>
> *The Court*: They did that they incorporated it into the November 15 document. So why are we rescinding this subsequent agreement?

> *Hocking's Counsel*: Because, to use a mechanical analogy, your Honor, they changed the oil and didn't do the engine tuneup that was required.
>
> *The Court*: I don't know that your analogy holds up, Mr. Skrobot. Because it's signed by Gary Smith who represents the plaintiffs; but more importantly, it's signed by Margared Carmany who represents [Hocking]. So both parties signed it.
>
> *Hocking's Counsel: That's correct.*

JA at 137 (emphasis added). In sum, there is considerable evidence in the record to support the existence of a settlement agreement, despite Hocking's contentions to the contrary.

B. Is there a substantial dispute regarding the interpretation of material terms contained in the agreement?

Hocking contends that although the parties attempted to modify the Initial Settlement in order to bring it into conformance with Ohio law, specifically O.R.C. 3103.03 and related caselaw, the parties failed to modify the body of the proposed agreement in order to bring it into line with the new Exhibit A. Hocking argues that Section D of the main text of the agreement, which is the same in the Final Settlement as it was in the Initial Settlement, is irreconcilable with the amendment made to Exhibit A. Section D, entitled "Consideration for Settlement given by Hocking Valley", states in relevant part as follows:

> I. In consideration of the agreement made herein by plaintiffs, Hocking Valley consents to entry of a prospective injunction in favor of plaintiffs and the plaintiff class which will prohibit Hocking Valley, its employees,

assignees or agents, hereafter from any of the following; subject only to the exception in section (D)(2):

a. combining credit accounts of different persons;

b. presuming or requiring joint spousal liability for medical care of a spouse;

c. collecting or attempting to collect to individual accounts owed by one spouse from another; and/or

d. instituting any change in credit standards or accounting procedures which would have the effect of evading, avoiding, or undercutting these prohibitions.

2. The prohibitions of section (D)(1) apply in all circumstances save as to existing individual accounts which have been combined into a single joint account through the knowing and voluntary execution of Exhibit A by each spouse.

3. Further, and subject in the future to section (D)(2), Hocking Valley consents to entry of an injunction in favor of plaintiffs and the plaintiff class which prohibits Hocking Valley, its employees, assignees, or agents from taking any collection action of any type against any class member whose membership predates the date on which Hocking Valley fully implements section (D)(1) above, until and unless Hocking Valley reviews each account(s)

> of such class member and removes therefrom any spousal accounts combined with that individual account(s), if any.

According to Hocking, Section D(I) and (3) are inconsistent with Exhibit A as amended and clearly in violation of O.R.C. § 3103.03, making the reformation of the contract incomplete. Hocking understands Exhibit A as advising class members that they can be held liable under O.R.C. § 3103.03 for the debts of their spouse, but views section D of the agreement as prohibiting the hospital from enforcing the collection of such debts. Hocking contends that the result is a contract that is ambiguous and unenforceable.

Mrs. Edwards argues that the intent of the parties is clear from the face of the contract, is not ambiguous, and reflects a compromise position between the parties. Mrs. Edwards brought this lawsuit claiming that the Federal Equal Credit Opportunity Act, 15 § 1691 *et seq.*, prevents Hocking from collecting a debt from a spouse under federal law when that spouse did not give his or her consent or contract to do so. Hocking, on the other hand, argues that under Ohio law it could in fact collect a debt from a spouse based upon the *Kinkaid* decision and O.R.C. § 3103.03. According to Mrs. Edwards, the parties were able to compromise their positions in the settlement agreement by amending Exhibit A to include language allowing the collection of debts of a spouse only to the extent possible under the law.

What is interesting is that both parties agree that the amended settlement was intended to allow Hocking to combine the individual accounts of spouses to the extent permitted under Ohio law and not preempted by federal law, in order to cover medical expenses that are considered

necessary for one spouse, but cannot be paid by that spouse.[3] The real disagreement over terms goes to whether or not it is necessary for each Spouse to sign Exhibit A before Hocking can exercise that right. With regard to the first point, the amendment to Exhibit A, although poorly drafted, can be understood as allowing Hocking to combine the individual accounts of spouses to the extent permissible under applicable state and federal law. With regard to the second point, the district court did not abuse its discretion in holding that the parties unambiguously agreed that Exhibit A must be signed in order for Hocking to combine accounts.

If the parties had intended to allow Hocking to combine the individual accounts of spouses to the extent permissible under applicable state and federal law *without* having to secure a signed Exhibit A, they could have done so very easily. In other words, by adding to Section D(1)(b) a sentence similar to the one added to Exhibit A, the result now

---

[3]Both parties have so stated in their briefs, in combination with their polarized views on the intersection of ORC § 3103.03 and the ECOA. Appellant's Brief states at 21 that "[i]t was unquestionably Defendant's understanding that this modification to Exhibit A would permit Defendant to combine and collect one spouse's account from another spouse in certain circumstances in accordance with the law as provided in ORC § 3103.03 and *Kinkaid*," and argue that the ECOA does not preempt the Ohio statute to any degree, so that it is irrelevant. Appellees' Brief states at 15 that "[b]oth parties to the agreement submitted to the district court that they understood that [Hocking] may be able to hold one spouse responsible for the medical debts of the other only inasmuch as it is not preempted by federal law, specifically, the ECOA," and argue that the ECOA preempts the Ohio statute, so that the defendants will not in fact be able to combine accounts without consent.

sought by Hocking's counsel would have been achieved. Consider, for example, the following text in italics added to the existing text of Section D(l)(b): Hocking will be prohibited from "presuming or requiring joint liability for medical care of a spouse" *except to the extent possible under O.R.C. § 3103.03 and the federal Equal Credit Opportunity Act, if that spouse has neglected to provide support for necessaries to the spouse whose account has been created.* This obvious solution would have allowed Hocking to pursue its rights under O.R.C. § 3103.03 without hindrance. However, the parties instead chose to amend Exhibit A, knowing that Exhibit A was a form that must be voluntarily agreed to. In fact, the first paragraph of Exhibit A states as follows: "Notice: Signing this request must be voluntary. You cannot be asked or required to combine individual patient accounts or assume joint liability for your spouse's accounts by the Hospital. You may pay off any accounts owed by your spouse without also cosigning for those accounts." Nevertheless, if spouses sign Exhibit A, even if doing so for the purpose of combining their billing without actually joining their accounts, Hocking can combine their accounts and hold either spouse liable, *to the extent possible* under Ohio and federal law, for services provided to the other spouse.

A settlement agreement is a binding contract, and is in this case subject to the contract law of Ohio, since the choice of law provisions of the forum state, Ohio, point to the law of the state in which the contract was formed, which was in fact Ohio. *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487 (1941); *Wells v. 10-X Mfg. Co.*, 609 F.2d 248, 253 (6th Cir. 1979); *Nationwide Mut. Ins. Co. v. Ferrin*, 487 N.E.2d 568, 569 (Ohio 1986). *See also Marshall v. Beach*, 758 N.E.2d 247, 250 (Ohio 2001) (holding that a settlement agreement in Ohio is considered a binding contract subject to the essential requirements of contract law). According to the Ohio Supreme Court, extrinsic evidence surrounding a contract may only be considered when the language of the contract is

unclear or ambiguous or when the circumstances surrounding the agreement invest the language of the contract with a special meaning. *Shifrin v. Forest City Enters., Inc.*, 597 N.E.2d 499, 501 (Ohio 1992). Furthermore, when the terms of a contract are unambiguous, courts must not create a new contract by finding an intent not expressed in the clear language employed by the parties. *Ibid.* Since the terms of the Final Settlement in this case are clear, no extrinsic evidence can be considered and thus an evidentiary hearing is unnecessary.

If one takes Hocking's position that the ECOA does not preempt O.R.C. § 3103.03, then there is no question that Hocking has given up some of its rights under Ohio law with respect to the collection of debts from spouses. After all, since Exhibit A is an entirely voluntary form, married people who refuse to sign it cannot be held liable by Hocking for their spouses' bills, even if those bills were incurred for necessary medical services. And although Hocking claims that the intention of the amendment to Exhibit A was to allow Hocking to collect even without executing Exhibit A, the contract is unambiguous on this point, and it is not for us to create a new settlement based on Hocking's new counsel's current concept of the intent of the parties at the time of the negotiation. It is not necessary that a settlement agreement accurately reflect the state of the law, so long as it is not illegal. Hocking made this concession presumably as part of its consideration for the plaintiffs not pursuing litigation to

advance their view of the law.[4] Hocking must now live with the result.

Hocking finally contends that if the Final Settlement is determined by us to be in existence and that there is no substantial dispute over the terms of that agreement, we should reform Section D of the settlement so that it is consistent with Exhibit A. However, we hold that Section D is not in conflict with Exhibit A, if one understands that only when spouses voluntarily sign Exhibit A can Hocking combine those spouses' accounts to the extent permissible under O.R.C. § 3103.03 and the ECOA.

---

[4]Hocking has recently requested this court to grant it leave to submit an affidavit from Hocking's original counsel, establishing that Hocking "believed that the Amended Exhibit A to the Proposed Settlement Agreement would permit it to consolidate accounts as permissible by ORC 3103.03 even if Amended Exhibit A is not signed, while the Proposed Settlement Agreement purports to prohibit Appellant from ever combining accounts unless Exhibit A is signed." This new evidence cannot be considered by us on appeal. It would be more appropriately raised in a motion to the district court for reconsideration under Fed. R. Civ. P. 60, although in order for such a motion to succeed, Hocking would have to demonstrate that it had exercised due diligence to discover this new evidence, despite the difficulty of understanding why this affidavit could not have been obtained before now. Furthermore, we reiterate that the Final Settlement is clear on its face, and such extrinsic evidence is therefore not to be considered under Ohio law.

IV

For the reasons given above, we AFFIRM the district court's judgment in its entirety.

RYAN, Circuit Judge, dissenting. In my judgment, the district court erred in failing to recognize that there is an ambiguity in the parties' final settlement agreement, which required the district court to hold an evidentiary hearing to determine what the parties intended, so that the terms of *their* agreement, not the *courts'*, might be enforced.

As my colleagues have recognized, the settlement agreement consists of two documents: the Stipulation and Modified Exhibit A.

In Ohio, an "[a]mbiguity exists . . . where contract language is susceptible to two or more reasonable interpretations." *Potti v. Duramed Pharms., Inc.*, 938 F.2d 641, 647 (6th Cir. 1991) (citing *Wells v. Am. Elec. Power Co.*, 548 N.E.2d 995 (Ohio Ct. App. 1988)).

Here, the settlement agreement is indeed "susceptible to two . . . reasonable interpretations." *Id.* The Stipulation provides, in relevant part, that Hocking Valley Community Hospital (Hocking) may not hold spouses jointly liable for charges attributable to one of them, without the written consent of both. Modified Exhibit A, on the other hand, provides, in relevant part, that Hocking may hold spouses jointly liable for some (necessary) medical care charges attributable to one of them, without the written consent of both. Aside from other difficulties, this ambiguity produces a manifestly absurd result, in that, by the terms of the agreement, the hospital may not pursue joint spousal liability without approval, but must notify its patients that it has the right to pursue joint spousal liability without approval. The operative rule of logic here, is that a thing cannot be and not

be at the same time. The operative rule of Ohio law is that an ambiguity regarding a material term in a settlement agreement must be resolved, if at all, following an evidentiary hearing. *Rulli v. Fan Co.*, 683 N.E.2d 337, 339 (Ohio 1997).

The district court held that the obvious conflict between the Stipulation and Modified Exhibit A of the settlement agreement does not render the agreement ambiguous, because the phrase "to the extent possible" in Modified Exhibit A, if construed as meaning "to the extent possible under law, makes Hocking's right to pursue joint spousal liability under Ohio law subject to whatever preemptive effect federal law might have. Quite aside from the illogic of finding the agreement unambiguous because it can be construed into unambiguousness, the district court's holding is completely nonresponsive to Hocking's ambiguity arguments.

The district court's approach to the problem was mistaken from the outset. In finding the contract to be unambiguous based on its *interpretation* of the phrase "to the extent possible" in Modified Exhibit A, the district court departed dramatically from basic rules of contract law, including the fundamental principle that ambiguity is to be determined by reference to the plain meaning of the terms of the agreement, *see Kelly r. Med. Life Ins. Co.*, 509 N.E.2d 411, 413 (Ohio 1987), and that judicial interpretation of contract terms is permissible only in the presence of ambiguity, *Logsdon v. Fifth Third Bank*, 654 N.E.2d 115, 118 (Ohio 1994).

Because there is an ambiguity in the contract, and maybe more than one, and because the contract is a settlement agreement, the district court should have held an evidentiary hearing, *Rulli*, 683 N.E.2d at 339, rather than an *ad hoc* interpretation of the phrase "to the extent possible." Extrinsic evidence would have been admissible at this hearing to establish the parties' true intent or otherwise demonstrate that

a mutual or unilateral mistake occurred in amending the agreement.

Moreover, the court derived its interpretation of "to the extent possible" entirely from plaintiff Ruth Edwards's attorney's assertion, at oral argument, that the parties intended that phrase to mean "to the extent possible under law." Nothing within the four corners of the agreement supports that interpretation, and Edwards did not even proffer that possible interpretation in her written response to Hocking's motion to withdraw the settlement agreement. Moreover, the interpretation is not particularly plausible given the facts of the underlying lawsuit.

According to both parties, the change made to the original Exhibit A was intended to reflect Ohio Rev. Code § 3103.03, as interpreted in *Ohio State University Hospital v. Kinkaid*, 549 N.E.2d 517, 519 (Ohio 1990). Indeed, Modified Exhibit A cites Ohio Rev. Code § 3103.03. That statutory provision states, in part: "If a married person is unable to do so, the spouse of the married person must assist in the support *so far as the spouse is able*." Ohio Rev. Code § 3103.03(A) (emphasis added). *Kinkaid*, in turn, explains: "Where a husband is unable to provide for his own support, pursuant to R.C. 3103.03 a wife must aid in the support of her husband *to the extent that she is able*." 549 N.E.2d at 519 (emphasis added). Given the conceded fact that the parties tried to incorporate these authorities into Modified Exhibit A, it seems likely that they intended "to the extent possible" to mean "to the extent the spouse is able," not "to the extent possible under law." The parties may have intended either of these things, or something else, but this at least highlights one of the flaws in the district court's analysis. Not only did the court determine that no ambiguity existed by relying on an extrinsic submission of one party, it also totally ignored a more plausible, text-based interpretation of the agreement.

But perhaps most strikingly, the court's unauthorized construction of the phrase "to the extent possible" fails to resolve the ambiguity identified by Hocking. It seems apparent that the court misunderstood Hocking's claim of ambiguity. The opinion states several times that the purported inconsistency lies between the "original" agreement and the "amended" agreement. Then, when the opinion attempts to quote the specific text at issue, it reproduces two sentences, both of which appear in Modified Exhibit A. Thus, the opinion suggests that Hocking's claim rests either on an inconsistency between the original and amended agreements or on an inconsistency within the text of Modified Exhibit A itself. Both views are wrong. Hocking is complaining about an internal inconsistency *within* the amended agreement, between the language of the Stipulation and the language of Modified Exhibit A.

Perhaps as a result of this misconception, the court concluded that it could resolve any ambiguity in the agreement by interpreting "to the extent possible" to mean "to the extent possible under [federal] law." This construction simply misses the point!

The question is not whether one can read Modified Exhibit A to be consistent with federal law; rather, the question is whether one can read Modified Exhibit A to be consistent with the text of the Stipulation. One cannot. Therefore, an evidentiary hearing is necessary to determine what the parties intended with respect to Hocking's principal obligation when they amended the settlement agreement by adopting Modified Exhibit A. As written, the agreement does not clearly express the parties' intent regarding Hocking's authority to impose spousal joint liability.

I would reverse and remand for an evidentiary hearing.

FILED
MAR 09 2004
LEONARD GREEN, Clerk

Case No: 02-3362

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ORDER

RUTH EDWARDS, et al.

Plaintiffs-Appellees

v.

JACK E. MCCORMICK;

Defendant

HOCKING VALLEY COMMUNITY HOSPITAL

Defendant-Appellant

Upon consideration of the petition for rehearing filed by the Appellant,

It is **ORDERED** that the petition for rehearing be, and it hereby is, **DENIED**.

ENTERED BY ORDER OF THE COURT

s/s
Leonard Green, Clerk

IN THE STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

RUTh EDWARDS, et al.	:	CASE NO. C2-99-1343
Plaintiffs,	:	JUDGE MARBLEY
vs.	:	MAGISTRATE JUDGE KING
JACK E. McCORMICK, et al.,	:	
Defendants.	:	

PROPOSED STIPULATION OF SETTLEMENT BETWEEN PLAINTIFFS AND DEFENDANT HOCKING VALLEY COMMUNITY HOSPITAL

Plaintiffs Ruth Edwards and Ruth Edwards as the administrator of the estate of Thomas C. Edwards (plaintiffs) have alleged that defendant Hocking Valley Community Hospital (Hocking Valley) denied them and all others similarly situated certain rights under the Equal Credit Opportunity Act and Ohio's Consumer Sales Practices Act. Plaintiffs filed this case seeking class-wide declaratory and injunction relief to end account combination and collection practices which allegedly violated federal and state law. Individually, plaintiffs also sought damages and an award of attorney's fees and costs pursuant to these statutes. Hocking Valley has denied plaintiffs' claims, opposed class certification, and raised certain defenses.

Plaintiffs maintain they, individually and as class representatives, would ultimately prevail on all issues in this action, but believe the proposed settlement as set forth herein to be in their best interests and in the best interests of the class.

Hocking Vally denies all liability whatsoever, and maintains it would ultimately prevail on all issues in this action, but deem this proposed settlement to be in its best interests and in the best interests of the public.

The Court has not ruled upon any liability or non-liability of Rocking Valley. The Court has expressed no opinion with respect to the merits of this litigation, nor do the parties to this Stipulation make any admission or concession on the merits of this case. The plaintiffs and Hocking Valley (the parties) intend that this agreement not effect in any way the class or individual claims which remain pending against defendant lack E. McCormick, and that none of its provisions be interpreted to do so, such intent being expressly denied.

NOW, THEREFORE, IT IS STIPULATED AND AGREED by and among the plaintiffs and Hocking Valley that the claims for declaratory and injunctive relief and for damages brought against Hocking Valley by plaintiffs, on their own behalf and upon behalf of the plaintiff class, shall be settled and compromised subject to the approval of the Court, upon the following terms:

A. Class Certification. The parties to this Stipulation jointly move this Court to certify a plaintiff class pursuant to Federal Rule of Civil Procedure 23(b)(2), defined as all persons who, on or after December 13, 1997, have or will be "applicants" for "credit" (as those terms are defined by the Equal Credit Opportunity Act) for, or owe a debt for medical goods or services to, to Hocking Valley Community Hospital.

B. Submission of Stipulation. The parties shall promptly submit this Stipulation to the Court and jointly request the Court to approve it pursuant to Federal Rude of Civil Procedure 23(e) and to enter its terms as a final order pursuant to Federal Rule of Civil

Procedure 58. They agree to cooperate with each other and with the Court to that end.

C. Consideration for Settlement given by Plaintiffs. In consideration of the agreements made herein by Hocking Valley, all claims brought by plaintiffs, individually and on behalf of the plaintiff class, we hereby dismissed with prejudice as having been compromised and settled on the terms set forth herein.

D. Consideration for Settlement given by Hocking Valley.

1. In consideration of the agreements made herein by plaintiffs, Hocking Valley consents to entry of the prospective injunction in favor of plaintiffs and the plaintiff class which will prohibit Hocking Valley, its employees, assignees or agents, hereafter from any of the following; subject only to the exception in section (D)(2):

a. combining credit accounts of different persons;

b. presuming or requiring joint spousal liability for medical care of a spouse;

c. collecting or attempting to collect to individual accounts owed by one spouse from another, and/or

d. instituting any change in credit standards or accounting procedures which would have the effect of

evading, avoiding, or undercutting these prohibitions.

2. The prohibitions of section (D)(1) apply in all circumstances save as to existing individual accounts which have been combined into a single joint account through the knowing and voluntary execution of Exhibit A by each spouse.

3. Further, and subject in the future to section (D)(2), Hocking Valley consents to entry of an injunction in favor of plaintiffs and the plaintiff class which prohibits Hocking Valley, its employees, assignees, or agents from taking any collection action of any type against any class member whose membership predates the date on which Hocking Valley fully implements section (D)(l) above, until and unless Hocking Valley reviews each account(s) of such class member and removes therefrom any spousal accounts combined with that individual account(s), if any.

4. Enter a satisfaction of the judgment taken against plaintiffs in Hocking County Municipal Court Case No. 98-CVF-00404, removing any liens obtained pursuant thereto.

E. Other Relief. Hocking Valley shall pay plaintiffs' counsel $10,800.00 in full satisfaction of all fees and costs for legal work necessarily expended in litigating plaintiffs' claims against Hocking Valley. Of this amount, $6,000.00 shall be paid immediately upon the Court's approval of this Stipulation, along with reimbursement of the out-of-pocket expenses incurred for the deposition of Judy Smith (not to exceed

$250.00). The remaining $4,800.00 shall be paid in monthly installments of $500.00, to be received on or before the seventh of each calendar month beginning the month after the month in which the Court approves this Stipulation.

F. Miscellaneous. If the Court fails to approve this Stipulation or to enter a Rule 58 final order based upon it, the parties agree that nothing in it or in any statement or pleading made by either party in support of it, shall be admissible on the merits of this controversy in this of any other proceeding.

IT IS SO STIPULATED:

_____	s/s _____
Plaintiff	For Hocking Valley Community Hospital
Date _____	Date: November 10, 2000

_____
Edward A. Icove (0019646)
SMITH and CONDENI CO., L.P.A.
1801 East 9th St.
Cleveland, Ohio 44114
Tele: (216) 771-1760
Fax: (216) 771-3387
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_____
Gary M. Smith (0017141)
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Co-Counsel for Plaintiff

Margaret R. Carmany and (0042250)
ROETZEL & ANDRESS
155 East Broad Street, 12th Floor
Columbus, Ohio 43215
Tele: (614) 723-2020
Fax: (614) 463-9792
Trial Counsel for Hocking Valley
Community Hospital

[Modified Exhibit A]

We understand that the Hospital is required by the federal Equal Credit Opportunity Act to to create individual accounts for each spouse unless both spouses consent to a joint account. We further understand that under Ohio law, even if separate accounts are created for each of us, the other spouse may be responsible for payment, to the extent possible, if that spouse has neglected to provide support for necessaries to the spouse whose account has been created. We further understand that if we agree to the combination of our accounts into a single joint account, both of us will become legally responsible to pay all of these accounts, including after any divorce, separation, death or disability of the other spouse, or any other failure to pay, and regardless of whether there has been a neglect to support under Ohio Revised Code §3103.03. We understand that we have the right to refuse to sign this request. We also understand that, for convenience's sake, we may request the Hospital combine the *separate bills* for our individual accounts into one bill for all those accounts *without* also assuming joint liability on those individual accounts.

We understand that if we choose to create a joint account and assume joint liability for these accounts, such joint liability will extend to the account or accounts designated on this request. If future accounts are incurred, another "Voluntary Request for Combination of Individual Accounts and Assumption of Joint Liability for Spouse Accounts" form must be filled out before joint liability will occur.

☐ (I)(we) want the separate bills for the individual accounts listed above combined into one bill *without* assuming joint liability for those accounts or creating a joint account.

_____ _____

Name Date Name Date

☐ We want the separate individual accounts listed above combined into one joint account for which we both will assume joint liability.

Name Date Name Date

Notice to Cosigner.: You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility. You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount. The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of *your* credit record. This notice is *not* the contract that makes you liable for the debt.

Name Date Name Date

3103.03 Duty of married person to support self, spouse, and children; duration of duty to support; third person's recovery of support; funeral expenses of spouse

(A) Each married person must support the person's self and spouse out of the person's property or by the person's labor. If a married person is unable to do so, the spouse of the married person must assist in the support so far as the spouse is able. The biological or adoptive parent of a minor child must support the parent's minor children out of the parent's property or by the parent's labor.

(B) Notwithstanding section 3109.01 of the Revised Code and to the extent provided in section 3319.86 of the Revised Code, the parental duty of support to children shall continue beyond the age of majority as long as the child continuously attends on a full-time basis any recognized and accredited high school. That duty of support shall continue during seasonal vacation periods.

(C) If a married person neglects to support the person's spouse in accordance with this section, any other person, in good faith, may supply the spouse with necessaries for the support of the spouse and recover the reasonable value of the necessaries supplied from the married person who neglected to support the spouse unless the spouse abandons that person without cause.

(D) If a parent neglects to support the parent's minor child in accordance with this section and if the minor child in question is unemancipated, any other person, in good faith, may supply the minor child with necessaries for the support of the minor child and recover the reasonable value of the necessaries supplied from the parent who neglected to support the minor child.

(E) If a decedent during the decedent's lifetime has purchased an irrevocable preneed funeral contract pursuant to section 1109.75 of the Revised Code, then the duty of support owed to a spouse pursuant to this section does not include an obligation to pay for the funeral expenses of the deceased spouse. This division does not preclude a surviving spouse from assuming by contract the obligation to pay for the funeral expenses of the deceased spouse.

Supreme Court of Ohio.

OHIO STATE UNIVERSITY HOSPITAL,
Appellant,
v.
KINKAID,
Appellee.

No. 88-1744.

Submitted Nov. 14, 1989.
Decided Jan. 31, 1990.

Hospital brought action against wife for payment of medical services rendered to husband before his death. The Court of Common Pleas, Franklin County, entered summary judgment for wife, and hospital appealed. The Court of Appeals affirmed, and hospital filed motion to certify record. The Supreme Court, Douglas, J., held that wife was liable for payment of hospital and medical expenses incurred by husband before his death, where husband's assets were insufficient to pay such expenses.

Reversed and remanded.

Herbert R. Brown, J., filed dissenting opinion in which Moyer, C.J., and Resnick, J., concurred.

1. Where a husband is unable to provide for his own support, pursuant to R.C. 3103.03 a wife must aid in the support of her husband to the extent that she is able.

2. The determination as to a wife's ability to aid in the support of her husband is a matter to be decided within the sound discretion of the trial court.

On December 8, 1986, the Ohio State University Hospital, appellant, filed a complaint in the Court of Common Pleas of Franklin County naming appellee, Georgene Kinkaid, as the defendant. The complaint alleged that medical services, rendered to appellee's deceased husband, Dean J. Kinkaid, and unpaid in the amount of $7,099.20, were the obligation of appellee pursuant to R.C. 3103.03.

The decedent was admitted to Ohio State University Hospital on May 30, 1984 and remained there until his death on July 7, 1984. Dean Kinkaid died leaving no estate. As a result, appellant sought payment from appellee of the remaining amount due for the medical services rendered the decedent.

On January 22, 1988, appellee filed a motion for summary judgment, claiming she was not liable for the amount due. Appellant admitted that the appellee had not pledged her own credit for payment of the bill, nor had appellant contracted with appellee for the services rendered. The trial court granted summary judgment to appellee. On August 3, 1988, the court of appeals affirmed the decision of the trial court.

The cause is now before this court upon the allowance of a motion to certify the record.

Anthony J. Celebrezze, Jr., Atty. Gen., Perry R. Silverman and Chester T. Lyman, Jr., Columbus, for appellant.

Brandt & Hull and Joseph W. Hull, Grove City, for appellee.

DOUGLAS, Justice.

The issue before us is whether a wife is liable for the payment of hospital or medical expenses incurred by her

husband before his death when, at the husband's death, his assets are insufficient to pay such expenses.

R.C. 3103.03 provides, in relevant part, that "[t]he husband must support *himself*, his wife, and his minor children out of his property or by his labor. If he is unable to do so, *the wife must assist him so far as she is able.* * * * " (Emphasis added.)

Appellant contends that the General Assembly, by enacting R.C. 3103.03, has imposed a duty upon a wife to assist in the support of her husband when the husband is unable to provide for his own support. In support of its position, appellant cites *Dean v. Angelas* (1970), 24 Ohio St.2d 99, 53 O.O.2d 282, 264 N.E.2d 911, and several decisions from sister states.

Appellee argues that where she has not personally contracted for the services, has not pledged her own credit, and has not refused to obtain the needed services for her husband, she is not liable for her husband's support. Appellee cites *Tille v. Finley* (1933), 126 Ohio St. 578, 186 N.E. 448, and *Riverside Methodist Hosp. v. Payne* (1988), 48 Ohio App.3d 123, 548 N.E.2d 987.

We agree, in part, with appellant. *Tille* is easily distinguished on the basis of the court's holding therein. The court found that the creditor-plaintiff had furnished the medical services to the wife at her solicitation, had extended credit to the wife, and had looked to the wife alone for payment. In addition, *Tille* is a case involving a *husband's* responsibility (rather than a wife's responsibility) and, in *Tille*, the wife was still alive and could have been pursued for collection.

In part, we are more persuaded by the *Dean* case where the court said " * * * that a wife has a sufficient co-equal duty under the statutes to support herself and her husband * * *."

Dean, supra, Ohio St.2d at 102, 53 O.O.2d at 283, 264 N.E.2d at 914.

Each of these cases can either be distinguished or disapproved[1] when the statute is given a precise and literal reading. Of course, it is our duty to interpret the language of R.C. 3103.03 by giving it its clear and intended meaning. In *Slingluff v. Weaver* (1902), 66 Ohio St. 621, 64 N.E. 574, paragraph one of the syllabus, the court held that "[t]he object of judicial investigation in the construction of a statute is to ascertain and give effect to the intent of the law-making body which enacted it. * * * " The court also held, in paragraph two of the syllabus, that " * * * the intent of the law-makers is to be sought first of all in the language employed, and if the words be free from ambiguity and doubt, and express plainly, clearly and distinctly, the sense of the law-making body, there is no occasion to resort to other means of interpretation. *The question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact.* * * * " (Emphasis added.) Further, we know that "[i]n matters of construction, it is the duty of this court to give effect to the words used, not to delete words used or to insert words not used. * * * " (Citation omitted.) *Cleveland Elec. Illum. Co. v. Cleveland* (1988), 37 Ohio St.3d 50, 524 N.E.2d 441, paragraph three of the syllabus.

Applying these rules, the language of the statute is clear. Where a husband is unable to provide for his own support, pursuant to R.C. 3103.03 a wife must aid in the support of her husband to the extent that she is able. The

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[1]See *Cleveland Metro. Gen. Hosp. v. Oleksik* (1987), 38 Ohio App.3d 21, 525 N.E.2d 831, and *In re Rauscher* (1987), 40 Ohio App.3d 106, 531 N.E.2d 745. Any language in either of these opinions inconsistent with that of the opinion herein is disapproved.

determination as to a wife's ability to aid in the support of her husband is a matter to be decided within the sound discretion of the trial court.

We are aware of the strong public policy argument that the responsibility of support between a wife and husband should be one of mutual and equal obligation. We recognize that it is a desirable goal to have autonomy and equality regardless of gender. We are also mindful of R.C. 3103.01 which provides that "[h]usband and wife contract towards each other obligations of mutual respect, fidelity, and support."

Notwithstanding these laudable objectives, R.C. 3103.03 is clear and must be enforced as written. If the General Assembly chooses to alter the existing statute, then that is, of course, within its prerogatives.

Finally, implicit in our decision, without saying more, is that medical expenses are necessaries and, as such, are included as part of any definition of "support."

Accordingly, the judgment of the court of appeals is reversed. This cause is remanded to the trial court for further proceedings not inconsistent with this opinion.

Judgment reversed and cause remanded.

SWEENEY, HOLMES and WRIGHT, JJ., concur.

MOYER, C.J., and HERBERT R. BROWN and RESNICK, JJ., dissent.

HERBERT R. BROWN, Justice, dissenting.

I dissent because I believe that the majority's holding ignores the applicable language of the controlling statute.

It is a general rule of contract law that, absent a duty imposed by statutory law or voluntary agreement, one spouse is not liable for the debts of the other. *Hausser v. Ebinger* (1954), 161 Ohio St. 192, 53 O.O. 86, 118 N.E.2d 522, paragraph two of the syllabus. The majority finds statutory authority in the first paragraph of R.C. 3103.03. It provides:

> "The husband must support himself, his wife, and his minor children out of his property or by his labor. If he is unable to do so, the wife must assist him so far as she is able."

The majority correctly notes that this provision creates a mutual duty of support between husband and wife. However, it establishes responsibility to spouse and children, not to third parties.

The majority fails to confront the statutory provision which imposes liability on a spouse to third parties. That provision is in the second paragraph of R.C. 3103.03. It states:

> " * * * *If he neglects to support his wife, any other person, in good faith, may supply her with necessaries for her support, and recover the reasonable value thereof from the husband* unless she abandons him without cause." (Emphasis added.)

The above provision codifies the common-law doctrine of necessaries,[2] by making the husband liable for "necessaries" provided to the wife, but creates no corresponding duty for

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[2]See, generally, 1 Clark, The Law of Domestic Relations in the United States (2 Ed.1987) 444-448, Section 7.3.

the wife to pay for those provided to the husband.[3] We should not ignore, or try to circumvent, the statutory language which governs liability to third parties for necessaries. That is the issue before us, not a claim by a child or one spouse against the other.

It is undisputed that appellee never contracted with appellant to pay for the medical services rendered by appellant to her husband. The statute does not impose liability on her to satisfy this debt. Accordingly, I would affirm the decisions of the courts below.[4]

MOYER, C.J., and RESNICK, J., concur in the foregoing dissenting opinion.

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[3]R.C. 3103.03 has been held by one court of appeals to violate the Equal Protection Clause on the ground that "it is a gender-based statute that discriminates against men by placing on them the primary burden of family support." *In re Rauscher* (1987), 40 Ohio App.3d 106, 531 N.E.2d 745, paragraph two of the syllabus. We have not passed on this question. However, even if the statute were unconstitutional, this would not affect the outcome of this case.

The issue of constitutionality would be raised if a third-party provider of necessaries were seeking to recover from the husband. Here, the statute does not even purport to make the wife responsible to third parties for necessaries provided to the husband.

[4]I would also urge the General Assembly to reconsider R.C. 3103.03.

Supreme Court of Ohio.

RULLI,
Appellant,
v.
FAN COMPANY et al.,
Appellees.

No. 96-249.

Submitted April 1, 1997.
Decided Sept. 10, 1997.

The Court of Common Pleas, Mahoning County, approved settlement agreement purporting to resolve dispute between three brothers as to corporation and partnership they owned. Thereafter the Court denied motion to vacate approval judgment. Appeal was taken. The Court of Appeals modified and affirmed. Discretionary appeal was granted. The Supreme Court, Moyer, C.J., held that trial court abused discretion by ordering enforcement of disputed settlement agreement without first conducting evidentiary hearing.

Reversed.

Cook, J., dissented and filed opinion, in which Lundberg Stratton, J., joined.

Where the meaning of terms of a settlement agreement is disputed, or where there is a dispute that contests the existence of a settlement agreement, a trial court must conduct an evidentiary hearing prior to entering judgment.

Frank A. Rulli, appellant, initiated an action in 1992 in the Court of Common Pleas of Mahoning County against his brothers, appellees Nick and Anthony Rulli. In his complaint, Rulli alleged that his brothers had excluded him from the

operation of a corporation (Rulli Bros., Inc.), in which he and his brothers were equal shareholders, and a partnership (Fan Co.), in which the three were equal partners. Rulli sought a financial accounting of the two businesses as well as other property received and distributed, and also sought access to the books and records of the corporation and the partnership.

On June 23, 1993, during a hearing before the trial judge on pending motions, counsel for both parties indicated that they had reached a settlement purporting to resolve all matters involved in the dispute. Counsel for Frank Rulli then read into the record that Frank Rulli would purchase his brothers' interest in both the corporation and the partnership by paying his brothers $950,000 each for their interest. Counsel further stipulated that the corporation would be sold by asset sale, with the terms being cash payable within ninety days; the corporation would maintain a minimum inventory of $200,000; and all fixtures were to remain intact and in place. Nick and Anthony Rulli retained the right to use the names "Rulli Brothers" and "Rulli Brothers Market" in any future business, and agreed to be solely responsible for encumbrances, liens, or liabilities of the two businesses. All three brothers agreed to be equally responsible for a mortgage on a parcel of real estate owned by the partnership.

In response to a query by the trial court, Nick, Anthony, and Frank Rulli all indicated that they understood the parameters of the settlement agreement and agreed to be bound by it. The trial judge then stated that he would "mark the case called for hearing, case settled and dismissed," and gave counsel twenty-one days to submit a separate judgment entry. The court filed a judgment entry on June 23, 1993, to this effect.

No separate entry was ever filed, nor did the parties ever complete a formal purchase agreement. Anthony and Nick Rulli filed a motion to enforce the agreement, in which

they disputed the meaning of the statements read into the record at the prior hearing. They asserted that the agreement required Frank Rulli to pay $1.9 million for the entire partnership and its assets and for the inventory of the corporation free and clear of any liabilities, and that they each were responsible for paying one third of an existing mortgage. Frank Rulli argued that he was only responsible for purchasing the assets of the partnership and the corporation, and that the partners would then pay off the existing mortgage and distribute to each of the parties the balance of their capital and income accounts (approximately $45,000 each). This interpretation would have resulted in Anthony and Nick Rulli each receiving $852,500 as a net proceed from the transaction. Frank Rulli also stated that Nick and Anthony Rulli were excluding cash, the corporate name, and refunds due from suppliers on return items from the assets of the corporation in violation of the agreement. As a result, Frank Rulli filed a motion to vacate the June 23, 1993 judgment entry.

The trial court conducted a proceeding in which the judge allowed oral arguments on both motions. At the hearing, counsel for Frank Rulli attempted to admit into evidence two exhibits: an unsigned eleven-page settlement agreement and an affidavit by counsel stating his inability to conclude the agreement. The trial court sustained defendants' objection, concluding that the parties had reached a settlement at the prior hearing by stating that the plaintiff's claim that no final agreement had been reached was nothing more than an attempt to renege on the settlement. Judgment was then ordered pursuant to the defendants' interpretation of the agreement, without any consideration of the additional evidence the plaintiff had attempted to admit at the hearing. The trial court awarded two million dollars in money damages to the defendants. The court of appeals affirmed, but modified the original judgment awarding damages by ordering specific performance pursuant to the sale price as discussed in the original hearing.

The cause is now before the court pursuant to the allowance of a discretionary appeal.

Manchester, Bennett, Powers & Ullman, L.P.A., and John F. Zimmerman, Jr., Youngstown, for appellant.

Henderson, Covington, Messenger, Newman & Thomas Co., L.P.A., James L. Messenger and Jerry M. Bryan, Youngstown, for appellees.

MOYER, Chief Justice.

The question presented in this civil action is whether a trial court abuses its discretion by ordering the enforcement of a disputed settlement agreement without first conducting an evidentiary hearing. Analysis of the law and the underlying record in this case causes us to conclude that it is not within the province of the trial judge to enforce a purported settlement agreement when the substance or the existence of that agreement is legitimately disputed. Accordingly, we reverse the judgment of the court of appeals.

Where possible, it is generally within the discretion of the trial judge to promote and encourage settlements to prevent litigation. *In re NLO, Inc.* (C.A.6, 1993), 5 F.3d 154. A trial judge cannot, however, force parties into settlement. See *id.* The result of a valid settlement agreement is a contract between parties, requiring a meeting of the minds as well as an offer and an acceptance thereof. *Noroski v. Fallet* (1982), 2 Ohio St.3d 77, 79, 2 OBR 632, 633, 442 N.E.2d 1302, 1304. To constitute a valid settlement agreement, the terms of the agreement must be reasonably certain and clear. "A court cannot enforce a contract unless it can determine what it is. It is not enough that the parties think that they have made a contract. They must have expressed their intentions in a manner that is capable of being understood. It is not even enough that they had actually agreed, if their expressions,

when interpreted in the light of accompanying factors and circumstances, are not such that the court can determine what the terms of that agreement are. Vagueness of expression, indefiniteness and uncertainty as to any of the essential terms of an agreement, have often been held to prevent the creation of an enforceable contract." (Footnote omitted.) 1 Corbin on Contracts (Rev. Ed.1993) 525, Section 4.1.

In addition, the law disfavors court enforcement of contracts laden with ambiguity. "Courts have often said that they do not make contracts for the parties, very often in cases in which they wash their hands of a difficult problem that is thrust upon them by reason of incompleteness or indefiniteness in the expression of some term in a written instrument by which the parties clearly intended to be bound." *Id.* at 529, Section 4.1.

We observe that courts should be particularly reluctant to enforce ambiguous or incomplete contracts that aim to memorialize a settlement agreement between adversarial litigants. Though we encourage the resolution of disputes through means other than litigation, parties are bound when a settlement is reduced to final judgment. Since a settlement upon which final judgment has been entered eliminates the right to adjudication by trial, judges should make certain the terms of the agreement are clear, and that the parties agree on the meaning of those terms.

Though upon first examination, the settlement terms as read into the record on June 23, 1993, appear reasonably clear, the parties were subsequently unable to agree upon the meaning and effect of those terms. They were unable to execute a formal purchase agreement and they did not provide the court with an entry as ordered by the court. The parties instead offered varying interpretations of the terms read into the record, and disputed nearly every major element of the purported agreement. Therefore, the language read into the

record at the initial hearing reflects, at best, merely an agreement to make a contract.

Given the lack of finality and the dispute that evolved subsequent to the initial settlement hearing, we hold that the trial judge should have conducted an evidentiary hearing to resolve the parties' dispute about the existence of an agreement or the meaning of its terms as read into the record at the hearing, before reducing the matter to judgment. Where parties dispute the meaning or existence of a settlement agreement, a court may not force an agreement upon the parties. To do so would be to deny the parties' right to control the litigation, and to implicitly adopt (or explicitly, as the trial court did here) the interpretation of one party, rather than enter judgment based upon a mutual agreement. In the absence of such a factual dispute, a court is not required to conduct such an evidentiary hearing. *Mack v. Polson Rubber Co.* (1984), 14 Ohio St.3d 34, 14 OBR 335, 470 N.E.2d 902, syllabus.

Where the meaning of terms of a settlement agreement is disputed, or where there is a dispute that contests the existence of a settlement agreement, a trial court must conduct an evidentiary hearing prior to entering judgment. The judgment of the court of appeals is reversed and the cause remanded to the trial court for further proceedings consistent with this opinion.

Judgment reversed and cause remanded.

DOUGLAS, RESNICK, FRANCIS E. SWEENEY, Sr. and PFEIFER, JJ., concur.

COOK and LUNDBERG STRATTON, JJ., dissent.

COOK, Justice, dissenting.

I respectfully dissent. An oral settlement agreement entered into in the presence of the court constitutes a binding contract. *Spercel v. Sterling Industries, Inc.* (1972), 31 Ohio St.2d 36, 60 O.O.2d 20, 285 N.E.2d 324. As a contract, the settlement agreement is subject to contract defenses such as mistake and indefiniteness. A settlement agreement, however, is also subject to common rules of contract construction. Application of these rules prevents Frank Rulli from avoiding his agreed-to settlement obligations.

I

Indefiniteness

The majority concludes that the settlement agreement read into the record is too indefinite for the court to enforce and that the terms of that agreement, at best, reflect an agreement to make a contract. I disagree in both respects.

"Vagueness, indefiniteness, and uncertainty are matters of degree, with no absolute standard for comparison. It must be remembered that all modes of human expression are defective and inadequate." 1 Corbin on Contracts (Rev. Ed.1993) 528, Section 4.1. "The courts must take cognizance of the fact that the argument that a particular agreement is too indefinite to constitute a contract frequently is an afterthought excuse for attacking an agreement that failed for reasons other than the indefiniteness." *Id.* at 535-536, Section 4.1.

For a court to enforce a contract it must be capable of understanding, from the parties' expressions, the terms upon which the parties have agreed. See *id.* at 525, Section 4.1. "[A]n agreement can constitute an enforceable contract despite the fact that the parties have agreed to agree later on important terms or have agreed that final agreement will be memorialized in a final writing." *Id.* at 532, Section 4.1. Moreover, while indefiniteness of an agreement may be an indicium of a lack of contractual intent, a "court should be

slow to come to this conclusion if it is convinced that the parties themselves meant to make a 'contract' and to bind themselves to render a future performance." *Id.* at 569, Section 4.3.

Counsel for appellant concedes that "the parties and their counsel * * * stipulated on the record * * * that they had reached a settlement of all issues then in dispute between them, and that this settlement was to be effected by the purchase and sale of Appellees' interests in the two businesses in question." Review of the record reveals that appellant's attorney entered a reasonably detailed buy-out agreement concerning the partnership and corporation. The agreement included the purchase price of the businesses, the terms and time for payment, and the required inventory on transfer of the corporation. The agreement also specifically designated the sale of the corporation as an asset sale, addressed the parties' continued use of the trade name "Rulli Brothers," contained a geographically limited covenant not to compete, and required each party to pay an equal share of the remaining partnership mortgage. Each party assented to this agreement on the record.

Despite the existence of this detailed settlement agreement, appellant argues that the parties' later inability to complete a draft purchase agreement setting out more complete sale terms establishes that the parties initially lacked the requisite intent to enter into a contract. As aptly demonstrated in the court of appeals' opinion, however, the terms of the oral settlement agreement are detailed enough to determine contractual intent. While the parties were free to supplement the oral contract with parol agreements and to further incorporate them into an integrated purchase agreement, nothing required the parties to do so and failure to agree to parol terms did not vitiate the parties' original intent to contract.

Appellant specifically addresses four issues as "material" to the transaction, yet unresolved in the oral settlement agreement: "1) there is no allocation of the purchase price among assets to be conveyed by Appellees to Appellant, even as between the partnership and corporation; 2) there is no provision for the standard warranties and representations customarily given by a seller to a buyer in an asset sale, such as a warranty of corporate good standing, a warranty of title, a warranty of authority to convey, etc.; 3) although provision is made for a 'minimum inventory of $200,000.00 value[d] at cost,' no procedure is established for determining which items (such as perishables, 'out of date' materials, packaging materials, etc.) are to be excluded from inventory for purposes of determining the minimum required amount of inventory to be transferred, or for resolving disputes between the parties with respect to the valuation of inventory; and 4) there is no provision allocating the risk of loss or damage to the assets to be conveyed pending closing of the sale." Appellant additionally cites the lack of a provision "allocating taxes and other expenses associated with the purchase and sale of the assets in question" as a factor rendering the settlement agreement fatally indefinite.

It may have been prudent for appellant and his counsel to include some, if not all, of these terms in the initial settlement agreement. These terms, however, are not so essential to the core agreement that failure to include them should render the contract unenforceable. The rule of indefiniteness restrains courts from enforcing contracts where the parties' expressions are inadequate to reveal their contractual intent. Where, however, the parties express a contractual intent to undertake discernible mutual obligations, courts should not defeat those intentions because one or both of the parties lacked the foresight to negotiate terms that would have been more prudently included in the agreement. Accordingly, I disagree with the majority that the oral

settlement agreement is so incomplete that it, at best, reflects an agreement to make a contract.

II
Mistake

Appellant cites several additional conflicts to demonstrate a failure of mutual assent. These conflicts focus on the parties' varying interpretations of the terms of the oral settlement agreement, rather than a failure of operative terms to create an enforceable contract. Accordingly, these issues are most appropriately analyzed as concerning the contract defense of mistake.

Review of the procedural history of this case reveals that most of the "mistakes" that appellant now asserts as demonstrating a lack of mutual assent could be raised as defenses by appellees, but not by appellant himself. Consistent with the meanings ascribed to the settlement agreement by appellant, the appellate court concluded that the agreement required appellees to transfer, as assets of the corporation, the corporate name and all business records, cash, licenses, and leases belonging to the corporation. The subject of unilateral mistake is addressed in 1 Restatement of the Law 2d, Contracts (1981) 394, Section 153, as follows:

> "When Mistake of One Party Makes a Contract Voidable
>
> "Where a mistake of one party at the time a contract was made as to a basic assumption on which he made the contract has a material effect on the agreed exchange of performances that is adverse to him, the contract is *voidable by him* * * *[.]" (Emphasis added.)

Accordingly, even assuming that these issues create an avenue to defeat the settlement agreement, the agreement would be voidable at the option of appellees, not the appellant.

Appellant additionally argues that the parties disagreed over the meaning of the language of the settlement agreement concerning the covenant not to compete. The appellate court, however, properly concluded that the language of the covenant was clear and unambiguous, needing no interpretation.

"When two parties have reduced their agreement to writing [or have orally expressed their intentions to contract in identical words (Corbin at 619-620, Section 4.10)], using the words that each of them consciously intends to use, it is often not a sufficient ground for declaring that the agreement is void or subject to cancellation by the court that the parties subsequently gave different meanings to the agreed language, or even that they gave different meanings thereto at the time the agreement was expressed. If the meaning that either one of them gave to the words was the only reasonable one under the existing circumstances, as the other party has reason to know, the latter is bound by that meaning and there is a contract accordingly." (Footnote omitted.) Corbin at 617, Section 4.10.

Courts have an obligation to give plain language its ordinary meaning and to refrain from revising the parties' contract. See *Alexander v. Buckeye Pipe Line Co.* (1978), 53 Ohio St.2d 241, 246, 7 O.O.3d 403, 406, 374 N.E.2d 146, 150, and paragraph two of the syllabus. Accordingly, interpretation of a clear and unambiguous contract term, such as this one, is a matter of law, and a court ~~should not~~ admit extrinsic evidence to establish its meaning. *Shifrin v. Forest City Ent., Inc.* (1992), 64 Ohio St.3d 635, 638, 597 N.E.2d 499, 501.

III

Conclusion

Appellant has not demonstrated that he is entitled to have the settlement agreement voided as a matter of law, or that he was improperly denied an evidentiary hearing. This is not to say that there are no circumstances where an evidentiary hearing might be required to enforce an oral settlement agreement entered into before the court. Such a hearing is proper to resolve ambiguity in the terms of the agreement, to collaterally enforce parol agreements supplementing the contract, and to determine whether fraud or mistake occurred during contract formation that would render the contract voidable by the party seeking to avoid its force. Because none of those circumstances is present in this case, I would affirm the judgment of the appellate court.

LUNDBERG STRATTON, J., concurs in the foregoing dissenting opinion.